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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 14 May 2001

# Journal des débats (Hansard)

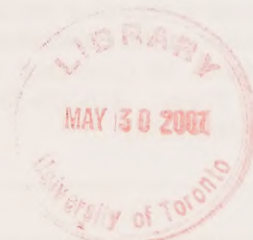
Lundi 14 mai 2001

**Standing committee on  
general government**

Election of Vice-Chair

**Comité permanent des  
affaires gouvernementales**

Élection du Vice-Président



Chair: Steve Gilchrist  
Clerk: Anne Stokes

Président : Steve Gilchrist  
Greffière : Anne Stokes

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 14 May 2001

Lundi 14 mai 2001

*The committee met at 1613 in committee room 1.*

## ELECTION OF VICE-CHAIR

**The Chair (Mr Steve Gilchrist):** I call the standing committee on general government to order for the purpose of electing a Vice-Chair.

Honourable members, it's my duty to call upon you to elect a Vice-Chair. Are there any nominations?

**Mr Garfield Dunlop (Simcoe North):** I nominate Mr Miller, please.

**The Chair:** Are there any other nominations? There being no—

**Mr Rosario Marchese (Trinity-Spadina):** Should we recess?

**Mr Ted Chudleigh (Halton):** Did you want the job?

**The Chair:** There being no further nominations, I declare nominations closed and Mr Miller elected Vice-Chair of the committee. Welcome aboard, Mr Miller.

**The Vice-Chair (Mr Norm Miller):** Thank you.

**Mr Marchese:** Maybe next time people are late here, we're going to have a quorum problem, a procedural problem; we're going to fire the whip and the Vice-Chair and everyone, OK?

**The Chair:** Mr Marchese, I have every reason to believe the standing committee on general government will continue to function as a well-oiled machine, as has been the case certainly since you joined us.

**Mr Chudleigh:** Is the new Vice-Chair going to say a few words or should we just adjourn?

**The Chair:** We should just adjourn, and a motion to do that would be in order.

**Mr Chudleigh:** Good. I move adjournment. Norm's buying.

**The Chair:** Mr Chudleigh has moved adjournment. All in favour?

**Mr Marchese:** I support it.

**The Chair:** The committee stands adjourned.

*The committee adjourned at 1614.*

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Mrs Marie Bountrogianni (Hamilton Mountain L)

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Deuxième session, 37<sup>e</sup> législature

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STANDING COMMITTEE ON  
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AFFAIRES GOUVERNEMENTALES

Wednesday 6 June 2001

Mercredi 6 juin 2001

*The committee met at 1548 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Steve Gilchrist):** Good afternoon. I call the standing committee on general government to order. Our first order of business is to deal with the report of the subcommittee as we consider Bill 4, An Act to amend the Income Tax Act to provide a tax credit for contributions to registered education saving plans. Mr Levac.

**Mr Dave Levac (Brant):** Your subcommittee met on Tuesday, May 29, 2001 to consider business before the committee and recommended the following:

(1) That the committee meet on Wednesday, June 6, 2001, to hold public hearings on Bill 4, An Act to amend the Income Tax Act to provide a tax credit for contributions to registered education savings plans;

(2) That the clause-by-clause consideration of the bill be undertaken on Wednesday, June 6, 2001;

(3) That an advertisement be placed on the OntParl channel and the Legislative Assembly Web site and a press release to be distributed to English and French papers across the province.

The clerk of the committee is authorized to place the ads immediately;

(4) That the office of Mr Hastings (Etobicoke North) provide the clerk of the committee with a list of witnesses to be scheduled for public hearings;

(5) That the deadline for the written submissions be Wednesday, June 6, 2001 at 5:30 pm;

(6) That the witnesses be given a deadline of Tuesday, June 5, 2001 at 12 noon to request to appear before the committee;

(7) That the time allotted to individual witnesses for each presentation, on consultation of the clerk with the Chair, be determined by dividing the available time by the number of witnesses;

(8) That the clerk of the committee, in consultation with the Chair, be authorized prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Do you move the adoption of the report?

**Mr Levac:** I move the adoption of the subcommittee report.

**The Chair:** Any comments? Seeing none, all those in favour of the adoption of the subcommittee report? Contrary? It's adopted.

SAVING FOR OUR CHILDREN'S FUTURE  
ACT (INCOME TAX AMENDMENT), 2001LOI DE 2001 SUR L'ÉPARGNE EN  
PRÉVISION DE L'AVENIR DE NOS  
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L'IMPÔT SUR LE REVENU)

Consideration of Bill 4, An Act to amend the Income Tax Act to provide a tax credit for contributions to registered education savings plans / Projet de loi 4, Loi modifiant la Loi de l'impôt sur le revenu en vue de prévoir un crédit d'impôt pour les cotisations versées à un régime enregistré d'épargne-études.

**The Chair:** With that little bit of business out of the way, we appreciate the folks who have come before us here today. Our apologies that the vote up in the House has left us starting a couple of minutes late here.

## SASHA SUPERSAD

**The Chair:** We'd like to call forward our first presenter, Sasha Supersad. Good afternoon and welcome to the committee.

**Ms Sasha Supersad:** Thank you for having me.

**The Chair:** Just a reminder we have 10 minutes for your presentation. You can use that whole time for your comments or you can leave time for questions, as you see fit.

**Ms Supersad:** As you all know, I'm a 20-year-old single mother of an eight-month-old daughter. I recently started the RESP program with the UIC when she was six months old. I just want to thank you guys for giving me the opportunity to come here tonight to voice my opinion on this.

I'm starting college in September and I have to take out a loan for me to actually further my studies, because I believe that with a secondary education that's the only way you can make yourself a name in this world right now. I believe the RESP, with the extra 10%, would give me the advantage to give my daughter something that I didn't have. I don't want her to have the burden of having an OSAP loan over her head when she graduates from school, which I will have.

I recently heard about the RESP from my aunt when I was pregnant, because she started that for my cousin. Now my cousin's education is thoroughly paid for. As soon as I heard I could start an RESP for my daughter, I jumped at the opportunity, because she needs that. I won't be able to properly pay for her to go to university on my own. I put away \$50 from my child care tax benefit every month, which is very hard to do, because I make very minimum at the job I'm at and it's fairly hard to meet the necessities which she needs today. By the time she's ready to go to school, the tuition fees are going to be probably triple what I have to pay now. Currently, I have to pay \$1,000 for my first semester, so by the time she's ready to start, it's going to be \$3,000 or \$4,000, which I would not be able to afford.

Those are the main reasons why I support the 10% tax credit, because there are a lot of single mums out there whom I know personally who can't afford to put their children through post-secondary education, because they're struggling themselves. This is going to benefit not only single mums but the lower-income families who struggle these days to make ends meet. That's it.

**The Chair:** Thank you very much, Ms Supersad. Any questions from the Liberal caucus?

**Ms Caroline Di Cocco (Sarnia-Lambton):** Thank you very much for your presentation. I have to say that it's always remarkable when I see young single mothers who are trying to raise their children and continue post-secondary education and trying to develop a way of affording what is going to increase. You're absolutely right about the cost.

How much do you think the 10% of the qualifying contribution a year—I don't know. I was reading the explanatory note, and I believe that the maximum is \$100 per year. You knew that?

**Ms Supersad:** I know that.

**Ms Di Cocco:** OK. I think you've explained, but can you just reiterate for me, if you could, how you think that's going to help not just young people but people who want to further their own and their children's education?

**Ms Supersad:** I'm involved in a community program in Ajax where I'm at that helps out single mums or mums who just need that extra support. There are a lot of my friends who have children around my daughter's age who can't even go off to secondary education right now because of financial need. If they know they can get an extra \$100 back to reinvest into the RESP for their kids, they're going to feel better off. They're giving their kids something that they didn't get the opportunity to fulfill at their time. If they get that opportunity, then their kids are going to know, "OK, even though my mum had me when she was young, she's at least looking out for my future before I even get there." I think that's going to be better for the kids, because then they're going to know that it doesn't matter where you come from, at least you can always get a secondary education.

**Ms Di Cocco:** How much is that premium that you pay for this?

**Ms Supersad:** I pay \$50 a month, starting off right now.

**Ms Di Cocco:** Oh, \$50 a month?

**Ms Supersad:** Because I get \$191 from the child care tax benefit, so I take \$50 from that. Actually, I have to leave here after this, because I have to go to night school at Durham College. I'm taking a dental receptionist course, which will make me more money. So once I start getting the higher income, I'm going to increase the amount to go in. The more I can put in for her, the better it's going to be better for me in the long run.

**Mr Rosario Marchese (Trinity-Spadina):** You're obviously worried that many people can't get to university or college, right? You said you know people who at the moment can't get there.

**Ms Supersad:** Yes.

**Mr Marchese:** Your feeling is that this will help to keep some of the people in colleges and universities—

**Ms Supersad:** I don't mean to cut you off, but at least our children would have the opportunity to fulfill something that they didn't get the chance to do right away.

**Mr Marchese:** I understand, of course. My problem is—I'm not opposed to this, obviously, and I'll get to other people; I'll be able to ask them other questions—I think governments are making it harder and harder for people to go to university—

**Ms Supersad:** They are.

**Mr Marchese:** —because tuition fees are very high.

**Ms Supersad:** Every year the tuition keeps going up and up.

**Mr Marchese:** Right. What do you think about that?

**Ms Supersad:** I think that's very unfair. I know they have to maintain the image of the university, because it's a lot of money to maintain all the students coming in, all the programs and everything, but it's being unfair to those lower-income families who want their kids to go off to school, to get a better-paying job, to make themselves a better name. So the more they raise the tuition, it's harder for us.

**Mr Marchese:** So while this might help a little bit for some people, you've still got a big problem on your hands in terms of paying these exorbitant tuition fees that this Conservative government has put in place in the last five or six years. Yes?

**Ms Supersad:** Yes.

**The Chair:** Thanks very much, Ms Supersad. We appreciate your taking the time to come before us here this afternoon.

**Ms Supersad:** Thank you very much for having me.

#### INVESTMENT FUNDS INSTITUTE OF CANADA

**The Chair:** Our next presentation will be from the Investment Funds Institute of Canada, Leslie Byberg. Good afternoon and welcome to the committee.

**Ms Leslie Byberg:** Thank you. My presentation will be very brief. My name is Leslie Byberg and I appear here before you on behalf of the Investment Funds Institute of Canada—known as IFIC, for short—and

IFIC's president and CEO, Tom Hawkins. It's a pleasure to be here.

If you don't know who we are, we're the national industry association for the Canadian investment fund industry. Today we have 77 fund manager members, 118 retail distributor members and 71 affiliated professional firms that are members of our organization. Our members manage over \$415 billion in investors' assets in 52 million unit-holder accounts, roughly, and many of our members offer and distribute RESPs to investors.

My brief observation is that we were pleased to see the initiatives to introduce in Ontario an RESP tax credit. As we've noted in some of the investor information we provide on RESPs, they're an important tool to help Canadian families provide for their children's education in a way that encourages some financial planning. The proposal to create a provincial tax credit would provide, we think, an additional incentive, obviously, to encourage Canadian families to save for their children's education.

Those are my very brief remarks.

**The Chair:** This time the questioning will commence with the government caucus.

**Mr John Hastings (Etobicoke North):** Ms Byberg, what is your assessment: if Ontario should adopt this initiative in a future budget, how do you think this would be accepted across Canada?

**Ms Byberg:** The hope would be that other provincial governments would consider a similar initiative. I think you'll probably be hearing from future presenters on the impact that the federal incentive has had on encouraging people to open these kinds of accounts.

**Mr Hastings:** In your considered assessment, where do you think Canada is as a whole compared to our US neighbour and other countries in terms of incentives provided in budgets by governments for savings for education? Specifically, I reference President Bush's education bill which is going through Congress. From what I can see, under section 529 of the Internal Revenue Code, the specific provisions under the college savings plans, Congress is probably going to expand the savings incentive in certain instances by a quarter of a million dollars, tax-free. What do you think of this initiative and where Canada lies in comparison and contrast to where the Americans are going, given the high overheads that drive education costs, which the NDP constantly ignore?

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**Ms Byberg:** I don't know much about that. I don't know much about the US proposal. What I do know is that the overall costs for education in the States are much higher, even at state universities. So maybe there's some catch-up going on there.

I guess I can say that our organization has, not just in this context but in the context of promoting incentives to encourage people to save, particularly for retirement, which is not what we're talking about today—we are obviously very much in support of that and our organization has made a lot of public statements to that effect.

**Mr Levac:** Just a quick question about an observation I'm making about various groups: I don't know if you're

included in that, but a lot of people are saying, to this incentive and to Mr Hastings, "Thank you very much. It's a good idea. It's in the right direction," but then they proceed to say, "But we have some other problems about how students are expected to fund their education."

It says in most of the research and some of the responses that 85% of students pursue post-secondary education after being seen as attached to some type of RESP. For my own knowledge, what happens to the other 15% who don't? Where does that money go?

**Ms Byberg:** For students who don't pursue—

**Mr Levac:** Yes.

**Ms Byberg:** I think, at least under the federal system, the income can actually be rolled over into an RRSP, to be contributed to as an RRSP, if I'm not mistaken.

**Mr Levac:** So there's no substantive loss in terms of putting this away?

**Ms Byberg:** No. I think the—

**Mr Levac:** I was alerted that there was a situation where you did lose some money if you didn't. So I was just wondering if you had any information about that.

**Ms Byberg:** No, I'm afraid I don't. I'm actually just going to look at some of the materials we have here on the Canada education savings grant.

**Mr Marchese:** If you have another sibling, you could transfer it to another sibling.

**Ms Byberg:** I think there was a lot more flexibility introduced so that you could somehow capture what you had been accumulating over those years.

**Mr Levac:** That's helpful. I would want to make sure to dispel any kind of misunderstanding that might exist that there are people lining their pockets with this type of program. At one time there were rumours or even actual facts where some people lost money because their child decided not to go to school.

Having said that, put that one out of the way and come back to the fact of your opinion in terms of, from your field, would you still encourage the government to participate in talks that would probably lower the cost of students going to school?

**Ms Byberg:** Yes.

**The Chair:** Thank you, Ms Byberg, for coming before us this afternoon.

#### ONTARIO COMMUNITY COLLEGE STUDENT PARLIAMENTARY ASSOCIATION

**The Chair:** Our next presentation will be from the Ontario Community College Student Parliamentary Association, Tracy Boyer. Good afternoon and welcome to the committee.

**Ms Tracy Boyer:** Just so people know, my name is Tracy Boyer and I'm the executive director for the Ontario Community College Student Parliamentary Association, Association parlementaire des étudiants des collèges communautaires de l'Ontario. OCCSPA/APECCO represents about 140,000 Ontario community college students. We work with education partners and

government to develop solutions to many issues that impact our constituents.

On April 25, 2001, our association provided a letter of support addressed to Mr Hastings for the 10% provincial tax credit on the first \$1,000 saved in an RESP. To reiterate our rationale, OCCSPA/APECCO has been working with a provincial group called the Ontario Advisory Committee on Student Financial Assistance—the acronym for that is OACSFA—to make recommendations to government about changes needed to student financial assistance.

We are well aware of the need for parents to save and plan for their child's education. It is evident to our organization that not enough parents know they are expected to contribute to their child's education. Although through the establishment of OACSFA, the government has taken steps toward developing solutions regarding student financial assistance, we believe more action is necessary.

Providing an incentive for parents to save is important to increasing access to post-secondary education. The Investing in Students Task Force also echoed the need for change in the area of student assistance and suggested developing an "invest in students" culture. Under this recommendation, they felt that early financial planning for post-secondary education is very important. As part of creating an "invest in students" culture, OCCSPA/APECCO believes that the government must provide incentives for parents to save for their child's education.

We support the need for change and endorse the recommendation of providing a 10% tax credit on the first \$1,000 saved in an RESP for families in Ontario. We look forward to further change in the area of student financial assistance by the provincial government and see this change as a step toward increasing access, but we still have more work to do.

We strongly believe that recommendations from OCCSPA must also be considered and implemented to uphold the commitment in the throne speech 2001 that every qualified and willing student will be guaranteed access to a post-secondary education.

Our organization was pleased to see that all parties supported this bill. We feel the comments made by the opposition parties were important in emphasizing the need for increased investment in post-secondary education.

The Minister of Training, Colleges and Universities appears to be committed to further improvements in student assistance. We understand that government views the cost of education as a shared cost but feel we really need to focus on ensuring this shared cost is reasonable and does not affect access.

The Investing in Students Task Force report that was released in February included a section on access and affordability. From the information in the report, it's plain and simple to see that for college students there have been significant tuition increases along with very significant operating grant decreases, which affect service and quality in our institutions. Tuition has risen quickly in such a short period of time. However, our communication to parents and students has not increased

to help people plan for this sort of change. The report emphasized the need for early planning, counselling and communication. OCCSPA has created a communications plan for student assistance, and we feel it's important that communicating change be a priority.

Our organization is also sensitive to comments made about families who cannot afford to save. In the college sector, there are a significant number of sole-support parents who are students as well, and I think Sasha spoke well to that. We cannot make these people choose between their own education and their child's future education; both are equally important to our society. More creative solutions are necessary. We need to recognize that although this is a positive step, more solutions are needed to ensure equity for all Ontario families.

To conclude, OCCSPA/APECCO continues to support this bill and encourages government to ensure this tax credit is properly communicated to parents as well as to track the benefits this bill provides to Ontario families. We need to be able to measure progress and ensure we are moving in the right direction with policy decisions.

**The Chair:** Thank you very much. This time we'll start the questioning with Mr Marchese.

**Mr Marchese:** Tracy, thank you for your comments. You pointed out that financial planning is important. I don't think there are too many people who disagree with that.

**Ms Boyer:** Right.

**Mr Marchese:** I also think you commented on the fact that many people would probably like to but can't, and so that's my question to you: do you think it's just a matter of people not wanting to versus not being able to?

**Ms Boyer:** I think what you have is a combination. You have some people who can afford to and do. Obviously you have statistics on how many people invest and how it makes students successful. Then you also have the people who don't know about how they can invest. That's where communication becomes very important. You also have a segment of the population which doesn't have the money to invest. What we're trying to say is that maybe this is a step in the right direction but we need to come up with some more creative solutions.

**Mr Marchese:** Tracy, my view is that a significant number of Ontarians simply can't afford to put that kind of money aside. While we have examples of people who are happy to be able to have this opportunity, the fact that 50% of Ontarians who work earn less than \$30,000 suggests to me that most people are just struggling. So, that's my concern around this particular issue.

The other thing Mr Hastings talked about is, where are governments with respect to giving incentives to people to save for their children? Do you think an incentive could be to reduce tuition fees as a way of getting students to go to college or university? Could that be an incentive?

**Ms Boyer:** I think to attend, but when you're talking about saving, I think it might be different. But yes, an incentive to have more people going to institutions, sure.

**Mr Marchese:** My view is that it would be an incentive.

**Ms Boyer:** Maybe that's something that can be worked on in addition to this sort of initiative.

**Mr Marchese:** Would that were the case. That's why I say to you that I support this as an initiative, because it's going to help a lot of people. There's no doubt about it.

My view is that those who have money will be able to save and those who don't, regrettably, may not be able to. Yes, it will help some; it won't be able to help many. My answer to it is to reduce tuition fees as a way of helping people.

**The Chair:** Thank you, Mr Marchese. We have time for a brief question from the government.

**Mr Norm Miller (Parry Sound-Muskoka):** Thanks for your comments, Tracy. There's a \$100 limit on this tax credit per year. What is your feeling about that?

**Ms Boyer:** Reflecting the views of my membership, they felt it wasn't substantial. However, it's important to start somewhere, and with the fact that a lot of things have been cut in our post-secondary education system, to try to get something out of the government in this area is an accomplishment. We felt it was important to support it, because it's a start. We'd like to see more substantial—maybe we can see that pocket grow.

**Mr Miller:** So, if it was a higher amount, that would be better?

**Ms Boyer:** Yes. For students, I think it would be better, families.

**The Chair:** Thank you, Ms Boyer. I appreciate very much your coming before us here today.

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#### LOUISE SALTON

**The Chair:** Our next presenter will be Ms Louise Salton. Good afternoon. Welcome to the committee.

**Ms Louise Salton:** Good afternoon, members of the committee, ladies and gentlemen. My name is Louise Salton. I am from London, Ontario. I'm a single mother of a foster child and an RESP subscriber. I am a nurse at St Joseph's hospital in London and am also involved with children's aid.

I first welcomed my daughter, Brooke Amber Lynn Gatto, into my home about three years ago. She was five at the time. She had already been in three foster homes prior to my home.

I started contributing to the RESP eight months ago, after seeing a sign about this in my bank. I contribute \$40 a month. I considered other options, such as savings for Brooke in a personal savings account, but the federal grant and the solidity of an RESP made it seem like the best option.

I feel it is very important for all parents to contribute to the RESP for their children. I recommend it to all parents and I do that every day. I think it is particularly important for foster parents, since these kids have often come from broken homes and abusive homes and do not have strong family foundations.

Investing in an RESP for my daughter has strong psychological benefits, as it shows her that I have a long-term plan for her future and will take care of her. This is a stability she has never known, and it is very important to her social and psychological growth. Letting her know that I believe in her abilities and value her contribution will build her self-esteem and lead her to set higher goals for herself.

More than psychological benefits, RESPs have definite financial benefits for foster children like my daughter. Unlike other children, foster children often have no plans made for their futures, no financial resources of their own. When they leave the homes of their foster parents, they may end up working at a fast-food restaurant or in another job where a lower education level is required and never get the chance to rise above that.

By preparing for her future with an RESP, I am breaking the chain for Brooke—helping her become educated, competitive in today's society and financially independent.

I think an Ontario tax credit will be a tremendous help to parents like myself who cannot invest as much as they would like for their children's future. The extra \$100 could be reinvested back into the RESP, meaning more saved for post-secondary education. I think an Ontario tax credit would also make more parents aware of the benefits of RESPs and start them on the road to saving for their children's future.

I would just like to add that Brooke's wish is to become a nurse or a doctor, and both fields require a post-secondary education. This means I have to save for her future education. That's why I have started the RESP for her. My education background, of course, is a college degree, which I obtained working and actually going to school at the same time. Coming from a very large family of 10 children, I had no choice.

**The Chair:** Thank you, Ms Salton. We'll start with Ms Di Cocco.

**Ms Di Cocco:** Thank you for your presentation. I have to say that I have to agree with you that education is the foundation for opportunity; it's where it's at, absolutely. You said that you have a responsibility. I sense your sense of responsibility toward your child. Government also has a responsibility. I agree that more parents—and I wished I was one, because it certainly cost me a lot to have my kids in school. We have to educate parents more to get into RESPs. The other part of the equation—I don't know if you know this or not, some of the stats that are out—is that today students have to work about 660 hours to pay for a bachelor's degree, whereas years ago it was about 235 hours and they could actually work themselves through school. Today the government is giving \$3,500 of public funds for private schools. I wish it would be sent off to post-secondary education because that, to me, is what the future is about.

The question is, what other mechanism do you think, besides the RESP, what other venue can we have to also sort of promote the responsibility that parents could buy into these RESPs?

**Ms Salton:** As a foster parent, I've actually gone to the children's aid and made sure this is in the newsletter, because a lot of us foster parents don't know about it. The only reason I knew about it was that I walked into my bank and it was right in front of me. So it's going to be in a newsletter, and that's Middlesex county. To make it more public, I don't know if you could do it through newspapers or television or something.

**Ms Di Cocco:** Some promotion on it anyway.

**Ms Salton:** Yes, it should be a promotional thing.

**Mr Marchese:** I want to wish you the best as a foster parent, because obviously you're going to be a very good parent from what I hear from you. I have one question. Do you know parents who are having a difficult time even paying rent at the rates I see here in Toronto and in many other big cities and who would have a difficult time putting even \$40 aside, as you're trying to do, for this kind of plan? Do you know anyone?

**Ms Salton:** Yes, I do. I have a very good friend. She has three children and her daughter is in my daughter's class. She has a very hard time. She's living in London housing.

**Mr Marchese:** So she wouldn't be able to put money aside for this. Even though we would do all the education in the world to try to get her to put money aside, she would have a hard time, right?

**Ms Salton:** She would have a hard time meeting that. The minimum maybe, but with three children it's hard, and she's a single parent.

**The Chair:** Thank you, Ms Salton, for coming forward. I'm sure Brooke will have a much better chance based on what you've told us here today. Congratulations on what you're doing.

#### JOSIE DeBORGER

**The Chair:** Our next presenter will be Ms Josie DeBorger. Thank you very much. I appreciate your coming before us here today.

**Ms Josie DeBorger:** Good afternoon, Mr Gilchrist and members of the committee. My name is Josie DeBorger. I am a 42-year-old RESP subscriber from London.

Both as a nurse and a teacher, I understand the value of a post-secondary education and the impact it has on a child's future. That is why I have already started saving for my two-year-old son, Peter Alexander. I agree with you that it is the foundation for opportunity. I have three other sons and we've had to sacrifice immensely to get them through school, where they are. As a long-term benefit, this is your financial planning. You have to plan for the future. It's for yourself and everyone else who's involved.

Because I am a firm believer in the benefits of long-term investment, I started subscribing in an RESP at the first chance I could and I hope to double my monthly contribution of \$56 per month in the future, because I don't believe you should take risks. This is your child's life, and who knows if we'll even be there. I'm sure that

within our will or anything like that we could make sure this RESP would continue to be paid throughout until its term is filled. So it's a guarantee that there's something there for your child. It wouldn't maybe pay everything, but it would give them a very good incentive to go. It would give them hope.

I first heard about it from an enrollment representative. With the other three boys there was a small investment firm and it wasn't all that helpful. They got through OK and they're doing all right, but I don't want to worry about Alex when I'm supposed to be looking at a retirement investment for myself. He's only two. If you're thinking of when he's ready to go to school, I will be in my sixties. I'm not sure of my future in retirement and I just don't want him to have to worry.

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Looking at the Ontario tax credit rollover, a 10% provincial tax credit will help me invest more in my son's future. An extra \$100 provided by the provincial government could be rolled over into next year's RESP contribution and earn the 20% Canada education savings grant. In this way, the credit would make much more of an impact than the original amount that was returned.

Also I'd like to include with the topic matter just before this that I put myself through school after the age of 30. I was a stay-at-home mom, but I wanted to give more to society and to fulfill my life. Ten years ago was 1992. I was paying \$300 for a university credit, for one subject. Now, as a teacher, if I want more credits, I pay almost \$900. That's three times the cost already.

I can truly appreciate the fact that you said, "We'd like to lower tuition." I'd love to have that as a guarantee, but for Alex in 15 years, we cannot take a promise. OK, we promise the tuition's going to be lower in 15 years. This \$100 per year might be small, but it's a stepping stone and it's more of a guarantee than a promise that in 15 years our tuition will be down. We would really like to have those promises that tuition will go down, but this is a stepping stone and it will make people look to the future with maybe a little bit more promise.

I would not be able to afford Peter Alexander's education costs without an RESP. I have to do it. There's just no other way. Overall, this tax credit would put out an alert for all parents to look into RESPs for their children. It might take one year of their going to the tax office and for their accountant to say, "Have you put anything away for the RESP?" A \$100 tax credit would be enough for them to go home and say, "Maybe we can do something about it."

Another issue is the amount you can put in per month. You don't have to put in \$50. You can put in \$10. If you would put in \$10 per month, that's \$120. That means you would really only be paying \$20 that year for even considering something for that child. As one's income can increase, you can increase what you're giving to the RESP. If this year I can only do the \$56, at the end of the year, if I have anything extra, I can put that in. The following year, if I earn more, I can put more in.

It's just teaching the public that there is something you can do for your child's education, no matter how small or

how big. It would make them think of their child's future and it's part of their financial planning.

In closing, I would like to thank Mr. Gilchrist and the members of the committee for their consideration. I think this is a great initiative on Mr Hastings's part and it needs to be supported. No matter how small it is, we can always alter the amount that is a tax credit, but it's something to give our citizens hope for the future and hope for their children, because there are some families that don't have a lot of hope. This is maybe a small sense of security, but a small sense of security can give people a lot of encouragement to work a little harder and find other means in educating their children and making sure they're well taken care of.

This is my second family. My first ones are all fine and they're all doing well, but when I'm 60 years old, this child deserves just as much of a chance as the other three did.

**The Chair:** We have time for one question.

**Mr Hastings:** Thank you for coming today. My question would reflect more on the sense of responsibility, or a culture of empowerment. Do you feel, in talking to other people who are subscribers to an RESP, that they have a greater sense of empowerment and responsibility in dealing with their children than a sense of dependency, which some critics would prefer to foster?

**Ms DeBorger:** I agree totally. The day I signed to give an RESP to Alex was a day when I felt fantastic; I really did. I felt that was just one less thing to really worry about. In fact, the sense was amazing. As a single parent, that was the first thing I did that week. That was the first thing I did. I just needed to know that was taken care of. Every day we have so many things that are unpredictable that can be there staring at you. You have to deal with them every single day, and it could be something different. But when you know that at least that is taken care of, it gives you that sense of empowerment that you have some control of your destiny and of your child's destiny.

**Mr Hastings:** Do you think that's even more important than the money, per se?

**Ms DeBorger:** The money is important too, but to have that feeling of security, I think, is what our citizens are looking for.

**The Chair:** Thank you very much, Ms DeBorger. We very much appreciate your coming all this way to make your presentation today.

#### CANADIAN ASSOCIATION OF NOT-FOR-PROFIT RESP DEALERS

**The Chair:** Our next presentation will be Tom O'Shaughnessy and Ken Goodwin from the Canadian Association of Not-For-Profit RESP Dealers. Good afternoon, gentlemen, and welcome to the committee.

**Mr Hastings:** Mr Chair, if we have folks who have travelled, are they entitled to travel costs per kilometre?

**The Chair:** The committee may decide to do that if there is an appeal. That's the sequence.

**Mr Marchese:** That was very helpful, John. I'll remember that.

**The Chair:** Welcome to the committee.

**Mr Tom O'Shaughnessy:** Thank you, Mr Chairman. First of all, we appreciate the opportunity to speak before the committee on general government today. It's our pleasure to be here. We represent the not-for-profit RESP dealers. Between the organizations in the not-for-profit group, we have approximately \$2.5 billion in assets under administration and over 600,000 individuals across the country signed up with us saving for RESPs. Our experience with RESPs is significant and has gone on for a long period of time. We have been involved with them for over 40 years.

**Mr Ken Goodwin:** We were very encouraged by the all-party support for second reading. As I understand it, it's very rare that we have all-party support.

**Mr Marchese:** Extremely rare.

**Mr Goodwin:** But it does actually show that all parties do support the fundamental principle that affordable post-secondary education is a top priority for the government. This initiative, we believe very strongly, is a very big and excellent step in that direction. It recognizes a need to motivate parents to save for education, and I think it's very important to get everyone sharing in the issue.

I would also like to remind the committee that even with the federal grant program, which has come into place since 1998, there are still only 22% of eligible parents in Ontario who are participating in RESPs. We want to increase those numbers to get more people participating.

**Mr O'Shaughnessy:** I'd like to thank Mr Hastings for his hard work on the initiative. We spent a fair amount of time going through the issues with him. It was his idea to bring this forward as a private member's bill. We thank him for his foresight and the work he and his assistant, Eve, have done in bringing it forward today.

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**Mr Goodwin:** I'd also like to thank those who spoke so enthusiastically on the bill in second reading: Marcel Beaubien, John O'Toole, Ted Arnott, Marie Bountrogianni and Rosario Marchese. John Hastings also made some excellent remarks about encouraging long-term savings by low- and middle-income families for post-secondary education, and Marie raised a good point about reviewing and improving the student assistance program to complement this bill. Of course, you spoke very passionately about access to post-secondary education, and we appreciate that. We know this is just one step, and we'd like to thank you all for the support you have provided. But we also recognize that this isn't the only thing that has to be done.

I would just like to let everybody know that we have met delegates in seven other provinces—Tom and I have been across the country over the last couple of years to try to promote this type of idea and concept—and we're going to another three very shortly. There is very strong support all across the country for this sort of thing. There's a federal program in place, but there are no prov-

incial programs. Everybody recognizes the need, everybody is interested in doing something, and it's just a matter of getting on their priority list. Of course, everyone is looking to Ontario to provide leadership, as it always does.

**Mr O'Shaughnessy:** To talk about the issues specifically, we view that there are really three funding pillars for post-secondary education in the province. One would be direct funding to institutions by government, and that is taking place today. The student loan program available to individuals who don't have the financial wherewithal—and obviously OSAP is there. There can be lots of discussion about its relative strength and effectiveness right now, but it is there and it is working. The third pillar is an encouragement for parents to save their own funds. At the provincial level there certainly isn't anything there right now. I'm sure there could be debate among the various parties about the relative weighting of each of those three pillars and how much is provided to each of them, but we see those three as the base. The pillar of saving for kids' education by parents really is one that will encourage a reduction in the requirement for the other two.

First of all—and I think it was mentioned by some of the members—the figures we have indicate that a family that has an RESP for a child will be in a position where they have a much greater possibility of that child not only going to post-secondary education but completing post-secondary education. Our figures indicate that over 85% of the children in our programs go on to some kind of post-secondary education. It doesn't have to be university. It can be community college, training schools—anything that provides a skill set beyond secondary. The other is that in the long run we feel it will reduce student loan costs in the province, that ultimately, when responsibility is put back on to the parents, the requirement for student loans will go down over time and ultimately the cost of writing off student loans will go down over time. It is a shift in responsibility, but it's also recognizing that there's still a shared responsibility between governments and parents to save for their kids' post-secondary education.

**Mr Goodwin:** As I mentioned before, the all-party support is very encouraging and does reflect positively all across the province, since those who buy plans are not of any one political persuasion. There's a universal recognition that there is a very big need here. As Tom mentioned, these savings don't have to go to university and extended post-secondary programs. They are good for any post-secondary program to help people get further education, which is definitely needed. Certainly this type of program will help get parents started in programs. As some of the other people have said, there are a lot of Ontario citizens who are saving very small amounts of money, but it does really help their children get into post-secondary education at the end of the day. They don't have to save \$4,000 a year. If they save the \$25 or the \$50, and if we can get another 5% or 10% of

the population to do that, that's going to help the Ontario economy.

**Mr O'Shaughnessy:** In closing, I would like to say that we recognize this is not the final solution; obviously, it's a step in the right direction. There have been some comments today about the fact that many families in Ontario just can't afford to put anything away. What we have seen in our organizations—we spend a lot of time with lower- and middle-income families; we're not organizations that try to attract people who do have money; we're focused on trying to get people access who would not normally have access to post-secondary education. So we do have a large number of families in the lower- and middle-income group who are saving, and saving relatively small amounts, in our organizations. We truly believe this initiative will encourage more of those type of individuals to participate and to ultimately give their children access to post-secondary education, and I think add future value to the Ontario community.

Thank you very much for letting us speak.

**The Chair:** You timed that almost bang on, so we won't have time for questions, but we do very much appreciate you coming before us here today. Thank you for your input.

**Mr Levac:** Mr Chair, one observation?

**The Chair:** Very briefly. You're using up your turn for the next go-round.

**Mr Levac:** You would do that? I'd forfeit my spot?

**The Chair:** Go ahead.

*Interjection.*

**Mr Levac:** Oh no, our spot. That's what she said. That's why she was pinching me.

I do want to make just one observation. You claimed that education was the top priority of this government. I beg to differ.

**The Chair:** And I was so charitable.

**Mr Levac:** That's the one I needed to make a comment about.

**The Chair:** It serves me right. Thank you very much. I appreciate your coming before us here today.

#### USC EDUCATION SAVINGS PLAN

**The Chair:** Our next presentation will be from USC Education Savings Plan, Mr Kevin Connolly. Good afternoon and welcome to the committee.

**Mr Kevin Connolly:** Good afternoon, Mr Chair, members of the Legislature, ladies and gentlemen. My name is Kevin Connolly and I am the executive vice-president of USC Education Savings Plan. Our plans are offered by a not-for-profit organization based in Mississauga, Ontario—obviously, Ontario. It is an honour and a privilege to have the opportunity of speaking with you today about an industry I have worked for now for more than a decade. It seems like yesterday, but it's a long time.

USC is one of the founders of the Canadian Association of Not-for-Profit RESP Dealers and we've been in business for over 35 years. We currently have over \$1

billion in assets and over 1,800 representatives across the country, many of those representatives here in Ontario. Ninety per cent of these representatives are parents who saw the importance of saving for their children's education through an RESP and wanted to tell others in their community about it. We have over 300,000 subscribers across Canada, 130,000 in Ontario alone. This year our organization paid out approximately \$12 million to post-secondary institutions across Ontario to help educate some 9,000 students.

I'd like to talk a bit about, first, the motivational benefits of an RESP. My role has been to help get the message out to Canadians and legislators that not only are there clear financial benefits of saving for children's education in an RESP, but there are significant motivational benefits as well that are often overlooked. As you heard earlier, our studies have shown that over 80% of students enrolled in plans go on to post-secondary education, and Statistics Canada surveys show that less than 40% of students without RESPs go on to higher education. An RESP has been proven to help children beat these odds. With only 20% of eligible parents holding an RESP, we really have a long way to go.

RESPs act as motivators for children to aim higher and to achieve their goals. When a parent subscribes to an RESP with a not-for-profit organization, or any group RESP organization for that matter, they receive a certificate that looks like this, and I can pass it around to let folks see that. They receive a certificate to put in their child's bedroom, serving as a constant reminder that the parent has faith in their child and has invested in their future. It's the kind of faith and encouragement that increases their children's self-esteem and leads them to pursue their goal of a post-secondary education.

With two thirds of all jobs now requiring post-secondary education, it's vital that every child receives the opportunity to compete in this global economy. That is only possible with a university degree or, at the very least, a diploma from a college or a trade school. We cannot overlook the importance of the growing need for higher education. The Ontario government must do everything it can to ensure a qualified, educated and competitive workforce for the new millennium.

Since 1998 the federal government has provided Canadians, as you all know, with a 20% Canada education savings grant on all RESP contributions. The proposed Ontario tax credit we are reviewing today would allow Ontario students to access two federal dollars for every dollar invested provincially. In fact, it's even more than that if parents reinvest the tax credit into an RESP and then receive the Canada education savings grant on top of that.

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While the RESP industry itself has tripled in size since the introduction of the CESG in 1998, from \$2.5 billion to over \$6 billion in the year 2000, in the last year the rapid rate of growth has somewhat slowed. One of the ways to address this problem is to show that encouraging RESP investment is not one government's response but has solid support from across the political spectrum. We

must not overlook the fact that education is a provincial responsibility and this is a golden opportunity to put money back into parents' hands, and students' hands, and to support them in saving for their future.

As I travel this country, and I do so on a regular basis, there is a tremendous interest from other provinces in introducing an initiative of this sort. But everyone first asks—and this is true—what is Ontario doing about it? I'm hopeful that this province will take the lead role on this and set a precedent for all other provinces to follow.

Also, for the last 25 years, we have published an annual Guide to University Costs—I believe you've all received one; it looks like this—that measures the cost of going on to post-secondary education by province, across the country. The recent trend we have seen is a dramatic rise in tuition fees as compared with years past. Ontario currently has the highest tuition fees in the country, this year edging even above Nova Scotia, which had previously held the record for the highest tuition rate for years. It's vital that we take further action to combat these rising fees and make sure post-secondary education is accessible to all, no matter what their income bracket may be.

One of the ways the provincial government has historically fought the war against the rising costs of post-secondary education is through the Ontario student loan program. The Ontario Ministry of Finance suggested last year that \$30 million to \$50 million a year is written off in student loan default costs, not to mention the student loan defaults not written off that occur every year. Students graduate from their programs with an overwhelming amount of debt looming over their heads which they cannot pay back, or else they don't finish at all and the money is wasted. It just doesn't make sense.

While student assistance at the post-secondary level is always needed, and loans, grants and scholarships are imperative in helping students complete their education, what is missing is a motivation and resources to go on to higher education in the first place. What better way to use the \$30 million to \$40 million lost than to address this need directly and encourage Ontario families to take their children's education into their own hands, with the government's full support?

Students become motivated from an early age to continue and to complete their higher education, and with the government's help they accumulate the resources to do so. I meet with parents every day. Most of our subscribers are low- to moderate-income Canadians. On average, they put away \$600 to \$700 a year for their children's education, but for them this is the most important investment they can make.

This would be a great opportunity for the Ontario government to show leadership, courage and sensitivity, and leave a legacy for Ontario's children. Our goal is to double the number of children in these plans in the next five years. Short of abolishing tuition, we really believe this is one of the best moves Ontario could make.

**The Chair:** Thank you very much. Ms Di Cocco.

**Ms Di Cocco:** Thank you for your presentation, by the way, and the balance with which you made the pre-

sensation. I have to say that you are right about the fact that, unfortunately, investment has to be a responsibility of the parents but also a responsibility of government. It's tremendously important.

When you were making your submission I was thinking, wouldn't it be a great idea if the government somehow, since our investment in post-secondary education is the lowest in the country, were to provide not only this tax incentive but increase the tax incentive so that more parents—to make it one of the mandates that they will give tax credits in the way that they've obviously found money for, as I said, public funds for private education? But if they could put funds into providing that encouragement, and I mean more so than they are now—in other words, give that process a real good kick; in other words, provide that fund—What do you think about that?

**Mr Connolly:** I believe we have to walk before we run, obviously, and there are financial considerations that have to be taken into consideration. But I can't disagree with you. The more initiative and the more incentive we can provide for Ontario parents to save for their kids' education through increased tax credits would be a good idea. But we do feel that this as a beginning would provide—people talked before about the promotion of RESPs. The existence of a tax credit, even at this level, would be such that it would bring a lot more focus on to RESPs and provide new initiatives for people to invest in them.

*Failure of sound system.*

**The Chair:**—any chance at all, about a minute and a half.

**Mr Marchese:** Thank you so much and I thank you for your presentation and bringing your observations and—*Failure of sound system*—one to one. Many of them find it a stretch to even put away \$10 a month.

*Failure of sound system.*

**Mr Marchese:** What happened?

**The Chair:** We're back on.

**Mr Marchese:** Kevin, I find your report informative and I agree with many of your observations, including where it says, "I meet with parents every day. Many of them find it a stretch to even put away \$10 a month," because it's true. That's the group I'm worried about. I don't have any disagreement with this plan, but I'm worried about how we help those who don't even have the ability to put \$10 aside for such a plan.

My concern is, of the 300,000 subscribers you've got—and I would have loved to have asked the Investment Funds Institute of Canada, because they've got billions, to see whether or not they keep statistical information on the people who invest in these funds and what the medium is—do people, by and large, who invest, the majority of them, have more than \$50,000, more than \$60,000, more than \$70,000? Because I suggest to you it's a class-related issue.

**Mr Connolly:** I would say to you that in our particular case, and I believe it would be true with many of the other group RESP companies, we deal with low- to middle-income Canadians primarily. While it is a stretch

at times to put \$10 away, what we work with, with these families, is sometimes to reprioritize their financial goals to say, "You want to save for your retirement. You have your normal day-to-day expenses that you must cover." That's reality; we all have that. But to say to them, "The post-secondary education of your kids happens before your retirement"—I'm not suggesting retirement isn't important. I'm suggesting, though, that many times they will find ways, even low- to middle-income Canadians, to reprioritize money to get an RESP going. A little bit is better than nothing. As long as you're making the effort, over time that money can grow and make a difference for those low- to middle-income Ontario families.

**Mr Marchese:** I understand, Kevin. I wish I had a little more time, but I don't.

**Mr Connolly:** We could debate that.

**The Chair:** Ms Mushinski is desperate to get in a very brief comment. I indulged Mr Levac, so just to show how balanced I am, Ms Mushinski.

**Mr Levac:** I knew I'd have to pay for this.

**Ms Marilyn Mushinski:** I will try not to be partisan, contrary to some members of this committee. I really appreciate your guide to university costs. The interesting bullet under the big picture on university education, which really spells it all out, says, "According to Statistics Canada, two thirds of all jobs in Canada now require a post-secondary education." I take it that you represent education savings plans for all kinds of registered post-secondary education institutions, that it doesn't just apply to universities or training colleges. Does it apply, for example, to co-op job training programs?

**Mr Connolly:** Yes, it can, as long as it's an accredited post-secondary institution that offers it.

**Ms Mushinski:** So RESPs essentially do allow flexibility when you have changing job market needs, for example, to accommodate those kinds of job opportunities. Would you not agree that Ontario is actually leading in providing those kinds of jobs?

**Mr Connolly:** In fairness, to answer the first part of the question, Revenue Canada sets out guidelines as to what programs are eligible for RESPs; however, there is great flexibility for many types of post-secondary programs. I unfortunately really can't comment, because I don't consider myself an expert, on the second part.

**Ms Mushinski:** The more jobs that are created and the more opportunities that are created, obviously it's really going to help the future of our children.

**Mr Connolly:** Absolutely; no question about it.

**Ms Mushinski:** I just wanted to get that question—

**The Chair:** Thank you very much, Ms Mushinski, for that clarification, and thank you very much, Mr Connolly, for coming before us this here this afternoon.

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ANGELIQUE GALANIS

**The Chair:** Our next presentation will be from Angelique Galanis. Good afternoon and welcome to the committee.

**Ms Angelique Galanis:** Good afternoon. Hello, everybody. My name is Angelique Galanis and I am a prospective RESP subscriber from Toronto, Ontario. It is a pleasure and an honour to be speaking before the committee on general government today.

I'm a mother of four daughters: Stephanie is nine, Kathrine is seven, Georgia is five and Andreana is three. I'm an entrepreneur who headed back to school at age 33 after 15 years in the insurance industry. I wanted to start up my own aesthetics business, and to do this I went to Seneca College part-time and the Canadian Aesthetic Academy full-time. I had to dip into my RRSP to finance this career shift, the lifelong learning plan, which I have to pay back within 10 years.

I got married at a fairly young age and was not able to go to university after high school, due both to my marriage and lack of financial resources. Re-educating myself at 33 made me realize the value and importance of a solid education. It is something everyone needs to advance in their careers and it is something I would like to give my children so that they don't need to make the sacrifices I made.

I had looked into getting an RESP years ago, before there was any financial incentive to invest in them. At the time, I decided to invest my money elsewhere. I heard about them again recently from a family friend and then from an enrolment representative. With the Canada education savings grant, they definitely make more financial sense. I like the fact that they are a forced investment, and they guarantee there will be financial resources for my children when they need to go to higher education.

The 10% provincial tax credit would certainly help. It would mean \$400 in extra dollars a year to be reinvested in our children's plans, money that could earn the federal grant and multiply.

With four kids, my husband and I have 16 years of post-secondary education ahead of us. With this credit, I'm certain the RESPs would be a tremendous help in ensuring that all our daughters receive the best education they can.

**The Chair:** Thank you very much. We'll start the questioning this time with Mr Levac.

**Mr Levac:** Thank you very much for your presentation and your dedication to your children, which is obvious from the people we've heard from, including the companies that are presenting before us. I dare say anybody who has children wants to provide for their education. I congratulate you on that. Thank you for your efforts.

Are you concerned about tuition fees?

**Ms Galanis:** I am.

**Mr Levac:** By saying that, is there anything you have thought of beyond the tax credit? Because quite frankly everybody around the table has indicated they actually support it.

**Ms Galanis:** The tax credit? With four children, I think a \$400 tax credit can make a significant difference if it's reinvested for us. When the children were born, I went and opened up a bank account. I've been putting

money aside, whether it's a birthday or Christmas or whatever.

**Mr Levac:** What made you do that?

**Ms Galanis:** I was thinking at the time that I've got to save for their future. That money does not grow, trust me. It grows very little every year. I think it was in 1991 or 1992, after my first daughter was born, when we looked at this, and there wasn't really a financial incentive to put the money in it; it was better for me to put those contributions toward my RRSP. But at the time that was the decision we had made.

Now, just in conversation, talking with some friends, they bring this up. I thought, "Oh, that's great. Let's look into it." It's definitely something we need to do for our kids. We need to transfer those savings. Even though Kathrine takes her book and looks at it and checks to see how much money's there, it's not a lot and it's not going to be enough.

**Mr Levac:** The best of luck.

**Mr Marchese:** Angelique, I'm just curious. Galanis: is that Lithuanian?

**Ms Galanis:** No, it's Greek. Both my husband and I are Greek.

**Mr Marchese:** I notice that Greek and Lithuanian last names correspond quite often.

**Ms Galanis:** Oh, is that right?

**Mr Marchese:** I have a question, because I worry about tuition fees. I think they're too high. I worry that a lot of people who don't earn a lot of money are having a hell of a time. So while this is a good idea and it's a good idea for you and many parents, I'm concerned about the fact that there are a whole lot of working Ontarians who are not earning a whole lot of money, and they have so many worries. Paying for college and university for their children is one concern, and I'm sure that everybody's got the same concerns we all do: concern about whether they have an apartment or a home, or whether they have enough money left over to even take some trips from time to time, I'm not even saying once a year.

While this is a good idea, I ask you the same question, Angelique, that I asked Sasha earlier on—no, it wasn't Sasha; it was Louise. Do you believe there are people who won't be able to put money aside, not because they don't want to but because it's hard?

**Ms Galanis:** It's hard, but I think if I can do it, anybody can do it. Trust me. There are areas where we can hold back, and even if it's a small amount it can be done.

**Mr Marchese:** I'm sure it can. I'm sure that people can put some money aside, no doubt. But do you believe, however, that while this is a good plan, you would encourage the bad guys over there—

**Ms Galanis:** I don't see any bad guys in this room.

**Mr Marchese:** —that you would encourage the government members to take a look at the fact that tuition fees have been incredibly high? In the last six years, tuition fees in universities have gone up 63%. That's in the regulated program, because in some of the unregulated programs like medicine and law it's gone up 500%.

Don't you have any advice for them in terms of what they ought to do about tuition fees—some advice?

**Ms Galanis:** Some advice. OK, just a suggestion out of my mind here: if the tuition fees are going to go up, why don't they go up at the same level that the cost of living goes up?

**Mr Marchese:** There's a thought, because you think 66% in six years is a lot, right?

**Ms Galanis:** It's a little outrageous. Yes.

**Mr Marchese:** Because your wages haven't gone up 66%, have they?

**Ms Galanis:** No, not at all.

**Mr Marchese:** By the way, Angelique, they're not listening right now.

**Ms Galanis:** They're not listening.

**Mr Marchese:** Have you noticed that when you have good suggestions, all of a sudden they're just busy?

**The Chair:** Mr Hastings, you have about one minute.

**Mr Hastings:** Ms Galanis, thank you for coming today. You're an entrepreneur, I take it.

**Ms Galanis:** Yes, I am.

**Mr Hastings:** For how many years?

**Ms Galanis:** I finished my education in November 1999 and started my business December 1999.

**Mr Hastings:** Do you have overheads in your business?

**Ms Galanis:** I do, but I've been managing quite well, thank you.

**Mr Hastings:** Would you suggest that one of the responsibilities of universities and community colleges and all the other public institutions is to manage their costs as well? What both sides forget about here is that what drives costs up to a great extent are your salaries and benefits, which I don't begrudge anybody having, but they forget to explain that. I'm trying to make a link here between your costs in your small business and the costs of the overheads in education, which are there.

**Ms Galanis:** From my 15 years in the insurance industry, what I experienced was that the benefits became paid by ourselves, not necessarily by our employers.

**Mr Hastings:** Right. The consumer.

**Ms Galanis:** Yes, bottom line. The experience reflected and the premiums went up and the deductions were made. So by the time you look at it, it's 100% contributed by the employee.

**Mr Hastings:** So your advice to us is that we should try to maintain our costs to the cost of living in the operation of post-secondary education?

**Ms Galanis:** Yes. I would say so.

**Mr Hastings:** Thank you very much.

**Mr Marchese:** What about the \$12 million in income tax—

**The Chair:** Thank you very much.

**Ms Galanis:** The cost of living—

**The Chair:** That's what happens when the root topic is something we all agree on, from what I hear from the debate. Thank you very much, Ms Galanis, for coming before us here today. We very much appreciate your presence today.

**Ms Galanis:** It was a very interesting experience. Thank you.

## ONTARIO UNDERGRADUATE STUDENT ALLIANCE

**The Chair:** Our final presentation this afternoon will be from the Ontario Undergraduate Student Alliance, Ryan Parks. Good afternoon. Welcome to the committee.

**Mr Marchese:** No politics, OK?

**Mr Ryan Parks:** How is that possible?

The materials that are being handed out now—there's no text for the presentation in them. What they are is a package developed by our organization to highlight the issue of student debt in the province. That's a result of many factors, and some of those factors I'll be speaking about today with reference to this bill.

1700

Mr Chair, committee members, on behalf of the Ontario Undergraduate Student Alliance and the university students of Ontario, I'd like to thank you for allowing me this opportunity to address your committee.

The Ontario Undergraduate Student Alliance represents the interests of all university students in the province. Our members include the University of Windsor, Western, Waterloo, Brock, Laurier, McMaster, Queens and part-time students at U of T.

I should begin by saying that our students appreciate the government's intentions with respect to Bill 4, An Act to amend the Income Tax Act to provide a tax credit for contributions to RESPs. We appreciate that the government and all members of provincial Parliament, judging by the vote at the end of the first reading of this bill, appreciate that the cost of a university education is much greater today than at any time in the past and that these higher costs and higher student debt can, and do, affect whether or not a student chooses to attend a university.

We recognize that in this new era of personal responsibility and accountability, many believe that families, when they have the means to do so, should plan to contribute a manageable sum to the costs of their children's education. We support this bill because it offers some, if modest, assistance for some families who chose or are able to invest in their children's goals of attaining a post-secondary education. But we have to recognize that times have changed. Students are expected to contribute even more toward the costs of their education than those who have studied before them.

In the past decade, average tuition for an undergraduate arts and science degree has increased by over 140%, and that's not in keeping with CPI. In programs that have been allowed to deregulate, the numbers are even more daunting. For example, the tuition at the University of Western Ontario's medical school has increased \$10,000 in just three years. While we appreciate the intention of this bill, clearly it will not assist those students who have experienced those increases. The tuition of this program is now \$14,000 a year, and the

figures suggest that the percentage of students from lower-income families in that program has decreased.

Situations such as these help to illustrate why it is now necessary for families to save for their children's education. Such a dramatic shift from public support to private funding, depending on your perspective, from our perspective is unfortunate. This makes the modest relief offered in this bill even more important for those who are able to afford to take advantage of it.

OUSA believes that students should contribute to the costs of their education, no doubt about it. However, the expectations that the government now places on students are becoming increasingly unrealistic. Students work longer hours to earn the same degree and still accumulate larger debt than previous generations of students. For example, at the University of Toronto, to afford one year of tuition in 1977, a student would have had to work approximately 250 hours of minimum-wage work that year. Currently, for that same degree, the student at a minimum-wage job would have to work 620 hours. To expect that students nowadays would work three times longer, if not three times harder, than students of their parents' generation we would suggest is unrealistic and onerous for students.

We hope in some small measure that this bill will decrease the debt load that current students endure for the next generation of students. Average student debt for a graduate in an undergraduate university arts and science program now sits at \$22,000 for a four-year program. For a young couple, this means they're graduating—one has a degree in English and one in science—with a combined debt of approximately \$50,000. For them to approach their banker, to want to start a family, to get a mortgage, to pay off those students debts is very, very difficult. We sincerely hope these graduates will be able to pay down their debt, start a family, make those purchases that are necessary and still have enough money left over to contribute early enough to an RESP for their children so they can benefit from this measure.

On the issue of choice, we do need to ensure that high school students are properly prepared for the realities of post-secondary education. Clearly, there has been a shift. But if we want to, as the government suggests, create choice at the secondary school level with tax credits, we also need to endeavour to create choice for students who are entering the post-secondary level, not only that they will be able to study in the area of their choice but also at the institution of their choice. Although the government has made limited commitments to ensuring that every student who is motivated and qualified receives a post-secondary degree, that does not necessarily mean that student will be able to get that degree in the area they wish. If they choose to be a social worker, a teacher or a lawyer, arguably that now is out of reach for many students.

In conclusion, Bill 4 is a modest but we think positive initiative for the future of students in this province. We would like to thank you for allowing us to present to you today.

**The Chair:** This time, the questioning will begin with Ms Di Cocco.

**Ms Di Cocco:** I just wanted to thank you for your presentation. I don't know if you know, but 10 years ago Ireland was the economic basket case of Europe. I believe after grade 10 parents had to pay for high school. Today, not only is high school paid for but so is university. Their investment in education has developed, if you want to call it, a competitive, innovative workforce. The whole issue of investment in post-secondary education is not something you have to convince me of, nor my caucus.

I just want a comment from you, because I hear over and over universities equated to a business. We have to run public institutions in a business-like fashion, but they are not a business; they're not the same as a business. The idea that somehow they should not be provided with funds by government, that they should figure out a way of doing it—what do you think about that kind of ideology or concept, that everything is equated to a business?

**Mr Parks:** Whether we like it or not, if that's the standard to which the government is holding institutions—we look at the recent Investing in Students Task Force that was commissioned by the Ministry of Training, Colleges and Universities. It was commissioned to find excessive or wasteful expenditures in the university system. Fortunately, from our perspective, the Investing in Students Task Force found that, by and large, institutions were operating efficiently. They were implementing business-like practices and there was not this large amount of money being wasted.

I believe firmly that education is a public good and should be funded as such. Maybe not in our country, but people from all areas of the political spectrum in the United States certainly feel that. If we've got this mindset of global competitiveness, we need to remain competitive with our closest trading partner, the United States. On a per capita basis, funding for post-secondary education in Ontario ranks 59th out of 60 jurisdictions. George Bush's Texas is the only jurisdiction that is unable to beat us—so Arkansas, Louisiana, Tennessee.

**Mr Marchese:** What gives? We should be number one.

**The Chair:** Mr Marchese, we only have about a minute left.

**Mr Marchese:** No, no. I appreciate Ryan's work. I thank him, and I want to give my time to the Tories because I'm sure they have lots of questions for him.

**The Chair:** If there's a quick question.

**Mr Hastings:** What do you believe, Ryan, led to the circumstances of making us 59th today? It wasn't just something that occurred. History is cumulative.

**Mr Parks:** I'm not here speaking on behalf of any party. I think it's a failure of society to recognize not only the social importance of post-secondary education but its economic importance. Students are not in favour of deficit spending, by any stretch of the imagination, but we do believe that a strong investment in post-secondary education will benefit everyone.

**Mr Hastings:** Do you believe this initiative, if passed in a future budget, could make available even more monies under the existing OSAP program? You would have some pressure relieved from those people who, because you didn't have this in place and did not have the federal measure in place—those families would be accessing OSAP to some extent. Do you see some pressure relief value in this initiative?

**Mr Parks:** I would, except the minister has already committed the government to making funds available for every eligible student. That's not an issue. The pie will grow with the number of students. Unfortunately the amount of money per student is not increasing. So no student will be cut off simply because they say there's no more money. Having said that, that's assuming the current level of funding for student assistance. You would consider it adequate and we would not.

1710

**The Chair:** We appreciate you coming before us here this afternoon.

With that, we'll now move into clause-by-clause consideration of Bill 4. Mr Hastings, normally the process would now be that you would move each section, unless anyone wants to make any brief comments. Are there any amendments from any of the three parties?

**Mr Miller:** I guess the only thing I wonder about is the amount, whether there is any consideration for raising the amount of \$100.

**Mr Levac:** On that question from Mr Miller, would that affect it as a private members' bill?

**Mr Miller:** The likelihood of it being—

**Mr Levac:** Because a private member's bill is not allowed to do finance ministry money or something like that.

**The Chair:** A private member's bill is not allowed to raise taxes. There is no restriction on the ability to reduce taxes.

**Mr Levac:** A tax credit. So that's not an expenditure.

**The Chair:** This is not an issue, no.

**Mr Levac:** OK, that's all. It was just a clarification. I defer to John.

**Mr Miller:** My only thought about that was I'd like to see it passed, so if it is passed at \$100 then I'm in favour of it, but I certainly would otherwise be in support of raising the amount to make it more substantial.

**Mr Marchese:** Briefly, Chair, as New Democrats, we support the initiative because it will benefit some people. Our worry as New Democrats is there are a whole lot of people who don't have a whole lot of money who won't be able to invest in this. While it might create an incentive for some people of even modest income to contribute \$10 a month, and while you might think it's a great thing, it simply will not help the majority of those people who desperately need to get help to deal with the tuition problems they're facing because of your government's initiatives. One of those initiatives—

**Mr Miller:** Excuse me, is he talking about raising the amount? What are you talking about, Rosario?

**Mr Marchese:** Sorry, Norm, I'm speaking to you—

**The Chair:** Rosario, in fairness, this might very well be Norm's first day in committee, so the process—

**Mr Miller:** He's just making political statements again.

**The Chair:** You might find, Mr Miller, that is not an all too infrequent occurrence in committee. Mr Marchese, I ask your consideration as we go through this.

**Mr Marchese:** I would if Mr Miller was a little more careful. When he says, "He's making political statements," the assumption he makes is that what he's proposing isn't political, that it's simply a harmless suggestion. I'll be kind to him, but Monsieur Miller, you've got to understand that what you've proposed is something New Democrats have a difficult time with. What we're suggesting, as New Democrats, is that you reduce tuition fees, that that's the better solution, that you're forcing more and more—he's not even listening, poor guy. You want me to be gentle, but he—

**The Chair:** I was just referring to the process of how the committee works here.

**Mr Marchese:** The fact of the matter is that more and more young people are working longer hours than ever before to meet the fact that tuition fees have gone up 60% in six years. People can't afford it. They can't afford to go to college, and if they're going, they're doing so assuming tremendous debt, those who go to college and those who go to university.

While this initiative may help some people, it will not help the majority of people the New Democrats worry about, and that is those who are on low incomes. Who helps them? This initiative, if it were to be increased in terms of the amount, while it would help those who have more money to put into these savings accounts, will not help the vast majority for whom New Democrats worry. That's my concern. For those, I say not to increase this amount to get to them but reduce tuition fees.

That's my proposal to him and I don't support that initiative at all. If he were to propose it, I would vote against the bill.

**The Chair:** Mr Miller, we've heard Mr Marchese's comments. An amendment is always in order.

**Mr Miller:** We're working on one.

**Mr Levac:** My observation on the sparked discussion that took place is to point out that a couple of the presenters provided us with the three pillars of our post-secondary education, which are the direct funding from government; the student loan program, OSAP; and direct savings from parents. To Mr Hastings, I believe you are headed in the direction that most people wanted us to go in terms of trying to get the parents, to educate them, to ask them to contribute, and I think that's laudable.

One of the concerns I had was that some of the comments made were maybe we have to reprioritize one and two. I'd like to cite an example that's taking place in my riding that I think needs addressing and, hopefully, members on that side and members of the government will assist us in this, and that is, Mohawk College offers a program called quickstart. The students in my riding are not eligible to get OSAP grants to do a quickstart pro-

gram for 24 weeks. That's way over that program application requirement for OSAP to be 12 weeks, which I believe it is. For that length of period of time, we can't get any funding for those students to take those programs in skills development programs.

So I would encourage very strongly that we take a look at one, two, three, those pillars, and make sure that OSAP is qualifying those students to get those loans, because if you're expecting them to pick up the slack and lessen the expectation of OSAP to pay for some of those courses the students can't afford, then I would say your bill is being used for the wrong purpose, not that you're proposing it that way, but if we're not going to take a look at OSAP grants and maybe make sure those students who want to take those courses are getting qualified grants, then you're going to expect them to come up with that money on their own. I'm saying that your proposal may be misused to lessen the burden of OSAP. I've heard those arguments before. I'm definitely afraid that's going to happen.

I agree with the three pillars, I agree with the legislation, but I am concerned that OSAP may be reshuffled, or they're not qualifying them, and say, "But we're expecting you to save the money to pay for it anyway." I'd like to challenge to make sure those pillars are in place for the proper reasons.

I want to echo what my colleague from the New Democrats said, that there are going to be some people who are not going to get some money. Our responsibility as legislators is to make sure that every single student in this province has an ability to get a post-secondary education. We know the research and we know we can't afford not to have them in that realm of post-secondary education.

**Mr Hastings:** I appreciate Mr Levac's comments regarding the situation in Brantford. I think you may be somewhat misconstruing my question to Ryan, that in fact somehow or other OSAP wouldn't be eligible—and it isn't for a certain number of reasons. I suspect we need to look at that specific government policy, but it's outside the purview of this. My intent in asking that question was very legitimate and I believe that in no way are we trying to undermine OSAP. We need this pillar, along with the other two. I think that when you empower people, even if they only put in \$10,000 over 10 years, that gives them maybe one half of a year of tuition at a community college that they didn't have before. That lessens the \$10,000 debt that they would have had had they been eligible under OSAP for whatever program they were applying for.

1720

All I'm trying to point out is that the effectiveness of this proposal is to advance education on all three fronts and to relieve the pressure that could have come when we don't have such an initiative in place. It's a complementary proposal, not a competitive proposal, to OSAP.

I think you would agree with me. I'm using a very modest number. If you have somebody who's only been able, over 10 to 15 years, with compound interest to save

\$10,000 to pay for whatever the costs of a community college program—and I use that one because the university ones are to some extent becoming very internationally priced—I think that is an effective, demonstrable, realistic proposal that people can see in their mirror. It is a way of giving them some power to handle it. It doesn't mean they're not still eligible for the other \$10,000 they may need for the price of the tuition in a given community college program. It could be university. It could be, under the specific circumstances Mr Connolly noted, a co-op work program. Maybe that's something we need to look at together in terms of the skills development of your specific community.

Those are my comments.

**The Chair:** Thank you, Mr Hastings. Ms Di Cocco?

**Ms Di Cocco:** I wanted first of all to congratulate Mr Hastings, because I believe this bill certainly encourages parents to take responsibility—which, for the most part, I believe they do—and gives them that incentive. I do want to congratulate you.

One of my biggest fears in the context of post-secondary education—I want to make this clear. Investment in post-secondary education by all people responsible, the parents as well as government, is key to developing what I call the best resources we have in this province, our human resources, our human capital, if you like. I'd like to think your bill provides, hopefully, a key point for the government in the larger picture, that we must invest and have access for our population, our society, to post-secondary education. We don't have that today.

As the young man from the students, Ryan Parks, indicated, the problem today is that it becomes inaccessible. This incentive will be great for the future, but I believe that too often the government—this is my view—divests itself of its responsibilities to the institutions providing what we need, thus creating this increase in personal cost to students and to parents, so much so that this becomes a drop in the bucket.

The Darwinian model of government, which is every person for themselves—I support this small initiative, by the way, but it does not address, to any extent, the issue of access to post-secondary education. To me, that's fundamental for the government to support, to invest in, in the long term, because that's what our future's about. Sustainable economic development is about our young people being able to access post-secondary education, not just because their parents can afford to and can submit monies every month, but because we believe as a society that that's important. And then the other part of the equation has to fall in too, because if it doesn't, globally we're just going to miss the boat.

**Mr Marchese:** I'm trying to curtail the discussion, but they make it so hard for me. Here is the nefarious, in fact insidious, nature of this proposal that I want to speak to. What this government is doing—what you guys are doing—is that people now are forced to save because of the high tuition fees. They have no choice.

This proposal encourages people to put more money aside for university and college. Mr Hastings, why are

you doing that? I suggest to you that this is where the insidious nature of this proposal is. If people are saving more money, they will not be angry at you for continuing to increase tuition fees to the extent that you are, making it harder and harder for young people to deal with those debt burdens.

If parents are saving for those kids, they won't be as angry, as many of them are now. This incentive is only intended to help people like you and your government, who are cutting back on investments in universities and colleges, and making up for those cutbacks by forcing students to pay more and more in tuition fees.

So your brilliant idea comes along: "We want to help people like Angelique Galanis. We want to help her because she's a good entrepreneur. We'll give her a couple of bucks and she's going to have a greater incentive to put money aside for her young kids." She feels great because she's getting a break from you. While that is a nice break for some people and while, yes, it benefits a section of the population, it won't help a whole lot of people who, in the last 10 years, haven't seen an increase in their income to be able to put money aside for this modest proposal you've put forward, let alone to deal with the disaster you've caused with the high tuition fees you've imposed on students.

Do you understand what I'm saying? It's a nifty little thing you're doing, in my view. It's so hard to vote against it because, my God, how do you vote against it, right?

I'm suggesting to you that the initial proposal you put forth, Mr Hastings, is something that I can accept and probably most New Democrats are likely to accept. I will vote against Mr Miller's proposal. I suggest to your government that to reduce tuition fees is the better way to go.

**The Chair:** Allow me to pose the question: Are there any amendments to section 1?

**Mr Miller:** I move that clause 8(9.6)(b) of the Income Tax Act in section 1 of the bill be struck out and the following substituted:

"(b) 20% of a qualifying contribution or \$200 per beneficiary."

**The Chair:** Any further comment?

**Mr Marchese:** Recorded vote.

#### Ayes

Gill, Hastings, Miller, Mushinski.

#### Nays

Levac, Marchese.

**The Chair:** The amendment carries.

Shall section 1, as amended, carry?

**Mr Marchese:** I'm going to propose that as a result of Mr Miller's motion, I will be voting against the bill, just for you to know.

**The Chair:** All those in favour of section 1? Opposed? Section 1, as amended, is carried.

Section 2: Any amendments? Seeing none, all those in favour of section 2? Opposed? Section 2 is carried.

Section 3: Any amendments? Seeing none, all those in favour of section 3? Opposed? Section 3 is carried.

Shall the title of the bill carry? Carried.

Shall Bill 4, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? I shall report the bill, as amended, to the House tomorrow.

Mr Hastings, did you have one small matter of business you wanted to give us?

**Mr Hastings:** I would like to move a motion that those folks who came today as presenters be entitled, or whatever the appropriate wording would be—be recognized by the committee to be paid for their kilometrage from their home to the Legislative Assembly.

**The Chair:** Just a point of clarification, Mr Hastings: traditionally it's people from outside of the Toronto area.

**Mr Hastings:** Outside of the Toronto area.

**The Chair:** Is that your motion?

**Mr Hastings:** That's my motion.

**Mr Marchese:** I'd like to speak to that, just to remind Mr Hastings that in the past we used to make it known to people that when they travelled they would be paid for that. Since your government came into place, there have been different ways of managing those problems because you're all so fiscally worried about money.

This is the first time I have ever heard a Conservative member, in public, say he wants to move a motion to pay for those people who came from out of town. New Democrats have always said that we should support those requests when they come to us, so I've got no problem with that. But Mr Hastings, I want to tell you that you and your members have been the ones who have been very hush-hush about this, that you have been very tight about supporting people who come from out of town, generally speaking. Normally, we agree in advance; normally, I propose to those folks that when people make that request, we support their request because we want to hear from people. It doesn't matter where they come from. Otherwise, it might reduce that access. I just wanted to put that on the record, Mr Hastings, because I'll remind you in future meetings with you at least.

**The Chair:** Mr Marchese, the Chair doesn't enter debate, but since this is dealing with a procedural issue of the committee, allow me, because in fairness, your party tends to sub in people for various bills. It is an oversight in our subcommittee report that we did not make it clear to Mr Hastings, as we normally would make it clear to the ministries, that people be required to advise us in advance if that is a condition of their attending. Recognizing that that wasn't in there and Mr Hastings was not advised, it's a sort of ex post facto dealing with this. I will make sure, as has been our custom in the past—not to contradict you too much—but where anyone has raised it and there has been a legitimate reason to reimburse, this committee has done so, at least, under my chairmanship since April of last year.

I will make sure, with your indulgence, to the three gentlemen on the subcommittee, that in the notice that goes out to Mr Galt's bill and Mr Agostino's bill we put in the reminder we traditionally put in, that people be advised to tell us before they attend what their expectations are.

**Mr Levac:** Just to comment on that, I would suggest respectfully that that needs to happen all the time.

**The Chair:** It does. As I say, it was an oversight, Mr Levac, when we crafted the subcommittee.

**Mr Levac:** But I will bring this up to you: in the two subcommittee meetings where we did set those bills in

place, we didn't do it. If it is traditional, we'd better make sure it's a procedure and maybe instruct the clerk that our first line will be, "Don't forget to do this." That's just to support it.

**The Chair:** It has duly been noted.

All in favour of Mr Hastings's motion? Opposed? The motion carries.

Thank you very much. The committee stands adjourned until next Monday.

*The committee adjourned at 1733.*

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A201  
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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 11 June 2001

# Journal des débats (Hansard)

Lundi 11 juin 2001

## Standing committee on general government

Subcommittee report

Highway Traffic  
Amendment Act  
(Outside Riders), 2001

## Comité permanent des affaires gouvernementales

Rapport du sous-comité

Loi de 2001 modifiant  
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(passagers à l'extérieur  
d'un véhicule)

Chair: Steve Gilchrist  
Clerk: Anne Stokes

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 11 June 2001

Lundi 11 juin 2001

*The committee met at 1608 in committee room 1.*

**The Chair (Mr Steve Gilchrist):** Good afternoon. I call the committee to order for consideration of Bill 33, An Act to amend the Highway Traffic Act to prohibit persons from riding on the outside of a motor vehicle. Thanks to everyone who has come to either make presentations or witness, and apologies that the proceedings in the House have delayed us from our normal start time.

## SUBCOMMITTEE REPORT

**The Chair:** Our first order of business would be the report of the subcommittee. Mr Levac.

**Mr Dave Levac (Brant):** Your subcommittee met on Wednesday, June 6, 2001, to consider the method of proceeding on Bill 25, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act, 1993; Bill 33, An Act to amend the Highway Traffic Act to prohibit persons from riding on the outside of a motor vehicle; and Bill 34, An Act to amend the Occupational Health and Safety Act to increase the penalties for contraventions of the act and regulations, and recommends the following:

On Bill 33:

(1) That the committee meet on Monday, June 11, 2001, to hold public hearings on Bill 33, An Act to amend the Highway Traffic Act to prohibit persons from riding on the outside of a motor vehicle;

(2) That clause-by-clause consideration of the bill be undertaken on Monday, June 11, 2001;

(3) That an advertisement be placed on the OntParl channel and the Legislative Assembly Web site and a press release be distributed to English and French papers across the province. The clerk of the committee is authorized to place the ads immediately;

(4) That the office of Mr Galt (Northumberland) provide the clerk of the committee with a list of witnesses to be scheduled for public hearings;

(5) That the deadline for written submissions be Monday, June 11, 2001, at 5:30 pm;

(6) That witnesses be given a deadline of Friday, June 8, 2001, at 5 pm to request to appear before the committee;

(7) That the time allotted to individual witnesses for each presentation, on consultation of the clerk with the Chair, be determined by dividing the available time by the number of witnesses;

(8) That, should a witness make a request prior to appearing before the committee for reimbursement for travel expenses, the committee authorize reasonable travel and meal expenses for witnesses travelling from outside the greater Toronto area based on mileage at the government rate or economy airfare or reserved seating train fare to be provided on submission of receipts or a statement of mileage travelled;

(9) That the clerk of the committee, in consultation with the Chair, be authorized prior to the passage of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

On Bill 25:

(10) That the committee meet on Wednesday, June 13, 2001, to hold public hearings on Bill 25, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act, 1993;

(11) That clause-by-clause consideration of the bill be undertaken on Monday, June 18, 2001;

(12) That an advertisement be placed on the OntParl channel and the Legislative Assembly Web site and a press release be distributed to English and French papers across the province. The clerk of the committee is authorized to place the ads immediately;

(13) That witnesses be given a deadline of Monday, June 11, 2001, at 5 pm to request to appear before the committee;

(14) That the clerk of the committee, in consultation with the Chair, schedule witnesses on a first-come, first-served basis;

(15) That the deadline for written submissions be Friday, June 15, 2001, at 5 pm;

(16) That the time allotted to individual witnesses for each presentation, on consultation of the clerk with the Chair, be determined by dividing the available time by the number of witnesses;

(17) That amendments be received by the clerk of the committee by Friday, June 15, 2001, at 5 pm for distribution to the members of the committee by 12 noon on Monday, June 18, 2001;

(18) That, should a witness make a request prior to appearing before the committee for reimbursement for travel expenses, the committee authorize reasonable travel and meal expenses for witnesses travelling from outside the greater Toronto area based on mileage at the government rate, or economy airfare or reserved seating

train fare to be provided on submission of receipts or a statement of mileage travelled;

(19) That the clerk of the committee, in consultation with the Chair, be authorized prior to the passage of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

On Bill 34:

(20) That the committee meet on Wednesday, June 20, 2001, to hold public hearings on Bill 34, An Act to amend the Occupational Health and Safety Act to increase the penalties for contraventions of the act and regulations;

(21) That clause-by-clause consideration of the bill be undertaken on Wednesday, June 20, 2001;

(22) That an advertisement be placed on the OntParl channel and the Legislative Assembly Web site and a press release be distributed to English and French papers across the province. The clerk of the committee is authorized to place the ads immediately;

(23) That the office of Mr Agostino (Hamilton East) provide the clerk of the committee with a list of witnesses to be scheduled for public hearings;

(24) That the deadline for written submissions be Wednesday, June 20, 2001, at 5:30 pm;

(25) That witnesses be given a deadline of Friday, June 15, 2001, at 5 pm to request to appear before the committee;

(26) That the time allotted to individual witnesses for each presentation, on consultation of the clerk with the Chair, be determined by dividing the available time by the number of witnesses;

(27) That, should a witness make a request prior to appearing before the committee for reimbursement for travel expenses, the committee authorize reasonable travel and meal expenses for witnesses travelling from outside the greater Toronto area based on mileage at the government rate, or economy airfare or reserved seating train fare to be provided on submission of receipts or a statement of mileage travelled;

(28) That the clerk of the committee, in consultation with the Chair, be authorized prior to the passage of the report of the subcommittee to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

I offer an amendment, Mr Chair. We should vote on that first and then amend?

**The Chair:** We'll hear your amendment and vote on that first, yes.

**Mr Levac:** The amendment is back on page 1, Bill 33, section (2), that the clause now read: "That clause-by-clause consideration of the bill be undertaken on Monday, June 18, 2001, after consideration of Bill 25, time permitting."

**The Chair:** Thank you, Mr Levac. I should mention that that amendment is apparently with the support of Mr Galt.

**Mr Doug Galt (Northumberland):** I appreciate that, Mr Chair, very much. What bothers me just a little bit is the "time permitting." Basically if we can get agreement

today, then it's up to legislative counsel to write the amendments necessary and we can circulate those. If everybody is comfortable, it's a matter of a vote, which actually could be taken at the beginning of the meeting. We're talking about one or two minutes, max.

**The Chair:** Our only problem, Mr Galt, is that we're bound by the House time allocation motion, which directs us that the first order of business has to be Bill 25 that day. However, if debate collapses before 6 o'clock, we will do it then; otherwise, you'd have my undertaking that we could do it as the first order of business the next sitting day of the committee.

**Mr Galt:** No problem.

**The Chair:** But if we have even a few minutes at the close of business, I hope all the members will agree with you that it is a very quick task in front of them.

**Mr Galt:** It should require a very short period to get it through, and I appreciate the indulgence of recognizing the meeting for June 18 as well. Thank you.

**The Chair:** So, the first order of business is to vote on the amendment. Any further comment? Seeing none, all those in favour of the amendment? Opposed, if any? The amendment is carried.

All those in favour of the subcommittee report, as amended? Contrary, if any? It carries. Thank you very much.

#### HIGHWAY TRAFFIC AMENDMENT ACT (OUTSIDE RIDERS), 2001 LOI DE 2001 MODIFIANT LE CODE DE LA ROUTE (PASSAGERS À L'EXTÉRIEUR D'UN VÉHICULE)

Consideration of Bill 33, An Act to amend the Highway Traffic Act to prohibit persons from riding on the outside of a motor vehicle / Projet de loi 33, Loi modifiant le Code de la route pour interdire à des personnes de circuler à l'extérieur d'un véhicule automobile.

#### DRIVING SCHOOL ASSOCIATION OF ONTARIO

**The Chair:** I am told our colleague Ms Munro was actually required to be in two committee rooms at the same time. So, recognizing that fact and not wanting to hold up any other presenters, with the indulgence of the committee perhaps we could move on to our next presenter. That would be the Driving School Association of Ontario, Mr John Svensson. Good afternoon. Welcome to the committee. Just a reminder that we have 20 minutes for your presentation today.

**Mr John Svensson:** I'll be very brief. Good afternoon, ladies and gentlemen and guests.

The Driving School Association of Ontario certainly welcomes the opportunity to extend its wholehearted support for Bill 33.

Reducing the incidence of death, injury and property damage on Ontario's roads has always been a central focus of the Driving School Association of Ontario and its members. With approximately 375 schools operating close to 500 locations, DSAO-approved schools provide access to road safety services for virtually all of Ontario's communities, training over 100,000 new drivers annually through formal driver education courses.

Our sole recommendation is that the legislation consider clearly defining the criteria to be used in determining what constitutes riding "in" versus "outside" a motor vehicle. For example, are passengers considered to be outside the vehicle regardless of whether the bed of a pickup truck is capped, carrying an attached camper or open? Our primary concern is one of passenger protection. Passengers riding in an enclosed but otherwise external area do not typically have the protection afforded by structural rigidity or the availability of properly anchored seating and restraints.

We applaud this important legislative initiative and pledge to do our part, both through instruction and public education, to promote awareness about the hazards of riding on the outside of a motor vehicle.

Legislation, just so everyone is aware, doesn't equal compliance; nor does education. In our view, success ultimately is dependent upon clearly defined and enforceable legislation and clearly communicated information to the public in a manner that hopefully will motivate compliance.

**The Chair:** Thank you very much. That certainly leaves us time for plenty of questions, approximately five minutes per caucus. We'll start the rotation with the Liberals, Mr Levac.

**Mr Levac:** Thank you for your consideration and support. I have a couple of questions under the section where it describes the exceptions and the ways in which you wouldn't use the law to restrict people riding in the back of vehicles. It has been brought to my attention that agriculture requires some owners of pickup trucks to put employees in the back to go beyond the agricultural area in which they're working. Would you suggest this law would apply to them if they were driving on the road or a highway to get to another farm or anything like that?

**Mr Svensson:** Our position on this is that the inconvenience of having another car follow the vehicle is not an onerous requirement. One of our concerns was the 60 kilometres per hour and the fact that if people were allowed to travel between farms on public roadways, they may not be able to safely comply with that restriction of 60 kilometres per hour.

I think we have to be realistic in looking at the fact that this is also trying to prevent what we would term a high-consequence, low-probability event from ever happening. In terms of weighing that out, it doesn't pose a problem for us specifically.

**Mr Levac:** I'm not looking to try to find reasons why you shouldn't support the bill; I'm just looking for different ways in which people have approached me and said, "What about, what about, what about?"

**Mr Svensson:** Yes, and we've had the same experience.

1620

**Mr Levac:** The next "what about" they asked me was, some people modify their pickups by putting benches in the back and putting seat belts in them. Would that be open to your interpretation as being in compliance or not in compliance with the law?

**Mr Svensson:** As I've mentioned in my notes here, the issue of structural rigidity is an important one. We've seen people sitting on milk crates in the back, clamped down, but that certainly wouldn't qualify. I think the concern here is that if there's no way to communicate clearly with your passengers, if the vehicle wasn't originally designed to have that structural rigidity to withstand things like a tipover or a rollover, again there are enough exceptions out there already without having to create more.

**Mr Levac:** I'll make a statement and then my colleague will ask another question. I should defer some of this to the ministry people who probably have had some of these questions thrown at them. I'll defer to Mr Galt in terms of some of those clarifications more than anything else. All in all, your membership and the people you represent are saying, "Thank you very much. Proceed, and if there's anything else we can do to assist, we'll do so"?

**Mr Svensson:** In essence, yes.

**Mr Levac:** That's good.

**Mrs Marie Bountrogianni (Hamilton Mountain):** I have a question perhaps of Mr Galt or you, sir, on paragraph 5 under section 1: "A motor vehicle engaged in work, where the nature of the person's work requires the person to ride on the outside of the motor vehicle." This smacks of memories of the snowmobile act, of how you identify certain vehicles and the use of certain vehicles. For example, would a self-employed person using a truck for his work be considered the same? Would there be regulations defining the workplace and using the vehicle for the workplace? This could be a big exemption. I'm just thinking of the safety now, basically.

**Mr Galt:** If I can respond, Mr Chair. I've had some discussions with ministry staff here this afternoon. We were struggling with what's in here, which should perhaps be regulations, and I'd like to hear what the rest of the committee feels on that.

The other one we were struggling with was parades, when going at walking speed, whether to ride in the back of a half-ton truck is relatively safe compared to highway speeds. I'm very open to the committee. As long as a principle of "Don't ride in the back of half-ton trucks" is carried here, then I'm reasonably comfortable. Maybe we need a little more consultation as to what speeds, because there is some criticism as to these various items on the speed. Certainly the parents here feel that this speed—my concern when this was being drawn up with the agricultural community was that we might have a backlash with the agricultural community by not recognizing them. Maybe for regulation we need more consultation, and I don't necessarily disagree with that.

**Mrs Bountrogianni:** My concern as a parent is that a lot of summer students get jobs in rural areas. Would they then be exempted from this law? If their employer says, "Get on the back of the truck," they can't say no, those sorts of issues. I look forward to the regulations.

**Mr Galt:** Probably everyone in this room at some time or other has ridden in the back of a half-ton truck at speeds that probably were not really safe.

**The Chair:** Mr Martin?

**Mr Tony Martin (Sault Ste Marie):** No questions.

**The Chair:** Thank you. Any questions from the government benches?

**Mr Galt:** I basically support his concerns. I've had one person phone me about the riding in the back of a half-ton that has anchored seats and a cap on it. Your point is well taken, that if there are rollover bars in that cap, then that would be different than just a fibreglass cap.

**Mr Svensson:** Yes.

**Mr Galt:** I guess that would leave it to the opinion of an officer who might be laying the charges. You could put seats in the back of a half-ton that could be anchored, as well as seats in the cab, and also have rollover bars. That's a different situation than what we're discussing here.

**Mr Norm Miller (Parry Sound-Muskoka):** Your comment to do with "in" versus "outside" is what I was curious about. Would your membership be more in favour, for example, of a pickup truck with a camper on it, that people aren't able to ride in the back of the camper on a pickup truck?

**Mr Svensson:** Certainly. There's a bit of a dichotomy here. If you look at motorhomes and the way they're constructed and the lack of regulation that comes into that, in a lot of respects it's an issue of, at what point does it interfere with people's independent mobility? On the other side, where does this impact on safety and the serious consequences of even a minor collision?

To answer your question, certainly the perception from the consultations we've done to date is that the bed of a pickup truck is outside. Whether it's got a cap or whether it's got a cover or whether it's open, it's generally the same deal. The vehicle is not constructed to carry passengers in the back, and if it's modified, then you get into a whole series of other things. In terms of looking at the broad sense of the intent, what we perceive as the intent of this legislation, the problem that's obvious to all of us is when we see people in an open pickup truck being transported around and subject to serious injury on a minor mishap.

**Ms Marilyn Mushinski (Scarborough Centre):** I'm thinking of a specific circumstance in Toronto. Toronto, as you know, is referred to as "Hollywood North." If you drive in any part this city, you will always find there will be exemptions because of films that are being shot on Toronto streets. A well-known stuntman had a very unfortunate accident about 12 months ago. Would that particular circumstance be covered under this bill? Do you know?

**Mr Svensson:** I don't know that I can answer that, other than that I would think it's obviously part of the person's employment. Typically, they work on a closed-road system for the shoot. One of the major things, and I think it's related to the question you're asking, is that you can have an infinite number of exceptions. That's where, to us, clearly defining "inside" versus "outside" for purposes of employment becomes crucial. Then it gets deferred in terms of, shall we say, various interpretation bulletins, and quite rightly. The Ministry of Labour may be involved in terms of whether someone can be asked to ride on what they perceive is a hazardous circumstance. But we elected to stay away from getting into too tight a definition only because it becomes mired.

The simplest thing is to say that you can't carry more passengers than you have available seat belts. But we already did that process when seat belt legislation came in and people with six kids were saying, "I'm just not going to invest in a large enough vehicle to seat my whole family."

**Mr Galt:** If I may respond, Mr Chair. It's unfortunate that Ms Munro wasn't here to present along with staff from the ministry. Some of these problems might have been overcome with that presentation.

One of the thoughts we had on parades, and it could work the same with films, would be on approval of council, and then that kind of thing can take place. It may not protect the stuntman in this particular instance, but a stuntman is a very different kind of thing and would probably come under the Ministry of Labour or whatever.

The other is, the ministry has some thoughts on identification of what's an outside rider—we were in the hands of the lawyer when this was drawn up to begin with—what the thinking is. I think I'll present this later and be more specific about the box of a commercial vehicle, which includes the box of a half-ton truck, whether it be for farm use or whatever. If they have some thoughts, it'll be more specific, possibly, than in this legislation that we have before us right now.

**Mr Svensson:** Yes.

**The Chair:** If there are no other questions from the government, thank you very much, Mr Svensson. We appreciate your coming before us here today.

1630

JOHN AND JUDY LAWRENCE,  
LAURIE AND LINDA MACKEY,  
JENNIFER SHEPHERD,  
BETH CARR, JAY BAMBRIDGE

**The Chair:** Our next presentation is a combined effort. I'm told the groups have decided they'd like to speak jointly. I would like to call forward John and Judy Lawrence, Laurie and Linda Mackey, Jennifer Shepherd and Beth Carr, if we can squeeze you all in at the witness table down there.

**Mr Galt:** If I may, Mr Chair: since it's a rather large group and different ones want to speak, maybe we could extend their time just a trifle.

**The Chair:** We've got them down for 40 minutes, in fact.

**Mr Galt:** OK. Sorry, I didn't notice that. Thank you.

**Mrs Linda Mackey:** Thank you very much for listening to us today.

**The Chair:** Just before you go on, I wonder, for the benefit of Hansard, if you could identify—

**Mrs Mackey:** Who we are?

**The Chair:**—which is which.

**Mrs Mackey:** This is my husband, Laurie Mackey. I'm Linda Mackey. John Lawrence and Judy Lawrence are back here. Jennifer Shepherd is right here.

**The Chair:** Welcome.

**Mrs Mackey:** We have one more speaker. He's back there, and he'll come forward after.

Honourable committee members, almost one year ago we both lost our sons, Bart and Jay, while riding in the back of a pickup truck. Our lives have been changed forever.

These two young men were fun-loving guys. Jay was good-natured, with a lively personality, a man who would tackle any project with enthusiasm and fun. He was finishing the course for his DZ licence the morning of his accident. Bart was a laid-back person with a dry sense of humour, always making everyone laugh and loved to have a project on the go. He'd just completed the restoration of a 1974 Jeep the day before his death.

They were good friends. They made many a trip to Jay's grandpa's camp together. They both loved sports. They played hockey together, volleyball, baseball, golf. But they left us with us with many wonderful memories. We can look back and laugh at their many antics. They also left behind a wonderful sister, two great brothers and a precious little nephew, not to mention grandparents, aunts, uncles, cousins and lots of friends who truly miss them. Jay also left his special gal Jennie, who will remember him in her speech today.

We will never forget the devastation of police and OPP showing up at our door early in the morning of July 30, 2000, to inform us of their deaths. No one should have to bear that kind of grief. We miss them with all our hearts.

We are astounded at how many people did not realize it was not illegal to ride in the back of a pickup. Our stringent laws today seem to make everyone more safety conscious, but there's nothing safe about the back of a pickup. It offers no protection for the rider. One quick foot on the brake and you are thrown around. No one is allowed by law to ride in their own vehicle without a seat belt, so for drivers to allow outside riders in the back of a pickup just doesn't make sense.

We are here today to try to have this very tragic loss of ours rectified by having a bill passed to make it illegal to ride in the back of a pickup. We only want to see that no other family or families have to go through the loss of any loved ones. Many provinces in Canada—I believe it's five—have passed this bill, and we feel Ontario is behind the times on a very big safety issue. Referring to the name of this bill as the Jay and Bart clause, we feel, is

a terrific honour in their memory and would perhaps bring this very important issue closer to the minds of people and prevent further deaths or accidents.

Before we close, we would like to bring your attention to the ribbons we are wearing. We are not overly religious families, but we do have a belief system and we chose these colours for a reason, white signifying the light and the love of God, which we know surrounds us, and green signifying a healing process which we all agree would be a great beginning with the passing of the outside riders act, accompanied by the Bart and Jay clause.

I thank you for your time and support.

**The Chair:** Thank you.

**Mrs Mackey:** John has a letter.

**Mr John Lawrence:** I received this letter from Sergeant Don Missen of the Cobourg Police Service. It states:

"Regarding the proposed new law with respect to passengers riding in the rear box of pickup trucks, which has been introduced to the [Legislature] by the Honourable Dr Doug Galt, MPP for the county of Northumberland.

"Dear Sir:

"By way of introducing myself, my name is Sergeant Donald Missen of the Cobourg Police Service. Part of my job is community services, which requires me to lecture on safety issues within our community.

"I would like to share my opinions with the committee pertaining to this new law. I am strongly in favour of this law passing, due to the tragic incident which cost the lives of Jason Lawrence and Bart Mackey of our community.

"This occurrence may have been preventable, had the law already been in place. The rear box of a pickup truck, I believe, was meant for the carrying of materials, not passengers. We have nothing in place presently that would stop unsafe passenger travel in the rear of pickup trucks. After speaking with other members of my service, they strongly support the passing of this law also.

"In closing, it is our duty to ensure the safety of those travelling on our roadways and to prevent further tragedies from affecting other families and communities. This law is long overdue. Your committee has the power to turn such a negative event into a life-saving law in memory of Jason and Bart.

"Respectfully submitted,

"D. Missen."

**Ms Jennifer Shepherd:** Good afternoon, everyone. My name is Jennifer Shepherd. I just want to share with you a letter I recently wrote in support of this:

"Recently I gave a speech to my fellow classmates on the danger of riding in the back of a pickup truck. In the opening of my speech, I asked my audience a couple of general questions regarding this topic. In my first question, I asked them to raise their hands if they thought it was illegal to ride in the back of a moving vehicle without a seat belt. The entire audience raised their hands in agreement. In my second question, I asked them to

raise their hands if they thought it was illegal to ride in the back of a pickup truck. The entire class sat with a puzzled look on their faces and half the class raised their hands with an unsure glance to the front of the class, where I was standing.

"In disbelief, through the lack of awareness surrounding this issue, I continued on with my speech, presenting to them the dangers of riding in the back of a pickup truck and the repercussions that can follow. Since I was the 15th speaker of the day, the attention span of the class was running thin, but in the last few minutes of my presentation I shared my personal story with my class, which immediately changed their level of interest.

"I asked my class who had ridden in the back of a pickup truck before? Nearly the entire class had raised their hands. I lowered my voice and pleaded to my classmates, 'After I share my tragic experience with you, I pray that no one will ever ride in the back of a pickup truck ever again.'

"On July 30, 2000, my world came crashing down when my boyfriend Jason Lawrence was instantly killed when he was ejected from the back of a pickup truck. Jason and I lived an incredible life together and had planned every minute of our future together. Little did I know on July 29, as I sat waiting for him to get home, he would never return. The accident also involved two other friends riding in the back of the truck, Bartley Mackey, who was also killed instantly, and Robert Toddish, who suffered serious head injuries.

"I did not share this story with my class or write this letter for any sympathy, but simply because I feel this issue needs to be addressed immediately. After receiving the only perfect mark in my class for my presentation and noticing the level of interest I obtained after I concluded my speech, I found comfort in believing I had changed the beliefs of so many impressionable people.

"Simply because I find it so hard to justify why it is illegal to ride in a closed vehicle without restraint, but it is legal to ride in an open vehicle without any restraints, I cannot think of a single, logical reason why this has never become law. I'm hoping this letter may even make a few people sit back and realize that something needs to be done to prevent anything similar to this happening in the future.

"I've witnessed the horrible grief that has surrounded the friends and families of these young men and I'm hoping that a law surrounding this can prevent accidents like this from happening in the future and the pain and grief that follows tragedies.

"In conclusion, please take my words seriously and make it illegal to ride in the back of a truck. This law will make anyone who chooses to ride in the back of a truck think twice about their decisions because laws are made for reasons, and I truly believe that my story is reason enough."

Thank you.

**The Chair:** Thank you. Does anyone else wish to make any comments?

**Mr Jay Bambridge:** I have a letter that I wrote on the day of the funeral. It just says,

"I don't know a lot of things for sure, but two things that I do know are: Jay Lawrence and Bart Mackey were two of my absolute best buddies in this entire world. They were two guys who would do anything for me at any time. I still haven't quite figured out why. I can only guess that maybe they loved me close to as much as I loved them.

"Jay was my buddy who would tell it to me like it was, no matter what the outcome; never to hurt my feelings or to make me look bad, but to show me another way of dealing with the situation and how not to let the situation deal with me.

"Bartley was my buddy who could always make me laugh, no matter how bad I felt. There was always something he'd come up with to turn a tense situation into a laugh.

"I just hope they know that even though I'm not exactly the one of their friends known for showing his sensitive side that in truth you guys were two of my heroes in the world and I'm one of the luckiest guys around who has been able to have a couple of buddies like you. Fellows, do one last thing for me. Save me a spot up top because one day I'm coming to see you again.

"Your buddy, Jay."

1640

**The Chair:** Thank you very much. Yes, ma'am.

**Ms Beth Carr:** Thank you. I'd like to thank the people for allowing me to speak today. I think, from those who have spoken before me, you can see the devastation in the families. Families, friends, of which I am very close, and the community in whole do not want to see this happen to anyone else's youngster.

It has been mentioned today about the speed perhaps of vehicles in agriculture, what it should be posted at. What would one consider a safe speed if people were driving or being driven in a vehicle where they weren't restricted by the restraints of a seat belt? In talking with the family and friends, we have fought for the safety of others and wanted honour for these boys.

If one bill can be passed, and secondly if the speed could be reduced, for their safety and their lives and their children's lives, to 20 to 25, I know it sounds a lot, but how much are we willing to pay for a life? Thank you for allowing me to address you.

**The Chair:** Thank you. Any further comments? Yes, sir.

**Mr Laurie Mackey:** I just made a trip up north to Thunder Bay, a fishing trip, and I stopped to visit a friend of mine in Terrace Bay at a GM dealership, Spadoni Motors, and we talked about losing my son. One of the salesmen there was travelling, I'm not sure exactly when it was, but they were travelling in a camper and their 7-year-old son was laying on the bunk, reading comics, and there was a rock slide on Highway 17 and he swerved to miss it and his son was ejected through the window, and they picked him up in the rock cut, dead. You were talking about campers, or something like that; there's another example.

On the way back, we stopped for lunch in Wawa and there were some American fellows there, going fishing with their sons. They had a Ford extended cab with a cap on the back and a trailer with all the gear in it. I sat and looked out the window, and two of the guys got in the truck and the two boys and one of the adults got in the cap of the truck. I had an awful time sitting there and not going to tell them our story, but I'm sure if they had a problem they wouldn't live to tell about it.

Our son used to go to Jay's grandma's all the time to help with cutting the wood in the fall and that. Jason's grandmother used to call him the funny boy. One time we were doing some work for their grandmother, and they were going to install a shed. We dug out all the topsoil and we had taken it to a dumpsite. I was always telling the boys, my son and my other sons, "Look around, keep your eyes open," but they'd never stop to pick up a nickel or a penny or something like that. I looked down and saw a five-dollar bill laying in the mud. I picked it up and said, "See, boys, it pays to look around once in a while."

I got back in the truck and said, "Well, if somebody lost \$5, they probably lost more than that." So I got back out and had another look before they got around out of the truck, and I found \$10. It was all covered with mud. I took it home and washed it off in the sink and hung it on the clothesline, and I said, "There's an example of looking around."

After a little while, my mother came to visit. I was telling my mother the story and I said, "Look." I looked up and there was a five-cent and a 10-cent Canadian Tire money bill left there. My \$5 and \$10 was gone. I guess that's why Jay's grandmother called him the funny boy: he was always up to something. But our funny boy now is gone.

I'd like to see this bill passed so that nobody else has to lose their children or grandchildren.

**The Chair:** Thank you very much. Any further comments? Seeing none, are there any questions? Mr Martin? No questions.

**Mr Wayne Wettlaufer (Kitchener Centre):** I would like to thank you and compliment you for coming here today, because I think it takes a tremendous amount of courage. Your story touched all of us, I'm sure. Looking across at Tony, I know it definitely affected Tony.

You heard a question earlier as to agricultural use. You mentioned that there were five provinces elsewhere in Canada that have adopted legislation similar to this. How did they deal with the agricultural use? Do any of you know?

**Mr Mackey:** The only thing I know is that I used to help a fellow who was in a bad accident with the bait business. I know that a lot of worm-pickers have vans or buses and they might take 10 or 15 people out. They've all got seat belts in them and so on and so forth.

Earlier, somebody mentioned something about firemen, for instance. My son has been captain of the volunteer fire department for six years now. He just took a course, and apparently it is now illegal to ride outside. All new trucks that are ordered have a space behind the

cab that's covered and seatbelted. I think the days of a guy holding on to the back of a fire truck are pretty much past with the new vehicles. I'm not positive of that, but I know the last time we were here in Toronto we saw a fire truck and there were two in the driving part of the cab, and in the enclosed cab behind it there were four more guys, but nobody was riding outside holding on or that type of thing.

**Mr Wettlaufer:** The reason I asked about the agricultural use is that that's a part of our global community, if you will, and they tend to think they need some exceptions for the transportation of multiple workers from place to place, especially where they have farms which are not adjacent to each other; they could be separated by several miles. Granted, many times they are not highways, but occasionally they will be highways. The difficulty from their standpoint will be that you can't drive too slowly with a vehicle and yet it's dangerous to drive too quickly.

**Mrs Judy Lawrence:** They have no time—

**Mr Wettlaufer:** Yes, I really appreciate that.

**Mr Mackey:** I don't know. I would think a farmer taking people in the back of a pickup and having an accident would be a good candidate for losing his farm.

**Ms Carr:** May I address that? I live rurally, and our children are taken by busloads to school. I grant you, there aren't seat belts in the buses, but at least it is safer with an enclosure, I feel personally, than it is riding in an open truck. So I don't understand why someone in the position of hiring people, and that's their livelihood, could not invest in a school bus rather than having the personnel they have hired, be it youth or adults, riding in an open truck. That's how I feel about it.

1650

**Mr Galt:** Thank you to all of you for just an excellent presentation. It was very effective and very thoughtful. I know it must have been very difficult. You may be interested to know that Mrs Munro, the parliamentary assistant to the Minister of Transportation, who is now here, was just in another hearing on another private member's bill having to do with a helmet law for children riding on horseback, at least in commercial establishments. An accident occurred; I remember the case, where a young child was killed, thrown off the horse. I just thought you might be interested in knowing that parallel legislation is being worked on, why she was out of the room at that time.

We're going to hear in a few minutes from her and a representative from the ministry. They have some views on describing, rather than an outside rider riding more in the box, a different kind of description. We were struggling with this, and legislative counsel assisted us with it. They have some other ideas to accomplish the same thing.

What you're driving for, regardless of the name of it, is that we make it illegal to ride in the box of a half-ton, bottom line. They have a little concern with some of what we have tried to put in here as exemptions that maybe should be regulations, and we'll be talking about that in a

few minutes. I think the bottom line again is something that's practical, something that will work. I just wanted to double-check with you while you were still here at the desk, that that's the general approach you're after and you're flexible how we get there, because there are different sections that can come in to the ministry. They're also looking at trailers. There are some trailers that are not covered that we could include in this, which would be every bit as dangerous, if not more dangerous, as riding in the back of a half-ton, like box trailers being towed behind a car. You will be here for the discussion.

There was a little misunderstanding prior to these hearings between the Minister of Transportation and the ministry. There was a drop or loss of communications, and they're not quite ready. That's why the amendments are not quite ready today, but we'll certainly discuss the content and, depending on agreement with the committee, where we take it from here. I think everybody is very much in support of what you're after. Any comments?

**Mr Lawrence:** I'd like to thank this committee.

**Ms Mushinski:** I shall be very brief. First of all, my very deepest sympathy to you all. As a mother of two daughters, 25 and 27 years old, I can't imagine what you've been through. I think you're very courageous to be here today. Hopefully this bill will make a difference and save lives.

I was particularly struck—I believe it was Mr Lawrence who suggested that there are a lot of hunters, of course, who have open pickup trucks up in the north. I don't know what other jurisdictions presently have this kind of restriction on riding in an open vehicle. Have you discussed such things as reciprocal agreements, for example, to make sure that the international traveller who comes to Ontario with vehicles for leisure and recreation like hunting would be aware of the new law, to make sure that what your intention is, which is to save lives, indeed happens for everyone who visits the province?

**Mr Mackey:** It's my understanding that some of the states do have the same law that doesn't permit it. But when I watched that group in Wawa get into that vehicle, and they had an extended cab, why didn't they all ride in the back? I have a truck. My sons have trucks. We put our gear in the back but we put our passengers in the truck. Probably most sales now are extended cabs, where you can ride six people and have seat belts for six people in trucks.

**Mrs Lawrence:** I feel, as a citizen living in Canada, that when I go to the United States, or wherever I go, it's my responsibility to know and learn the laws. I really feel that anybody coming here to experience our wonderful natural resources, whether it be fishing or canoeing or whatever it is they may want to do, it's their responsibility to know our laws.

**Ms Mushinski:** That really was my point. If we are changing the law, then there needs to be at least some way of communicating that and you would want us to consider that—

**Mrs Lawrence:** How would we communicate that? I don't know.

**Ms Mushinski:**—whether it would be either a posting at the borders or through some reciprocal agreement. I would assume that you would want to make sure that we broadcast as widely as possible the fact that there has been a change in the law and it's really to save lives.

**Mrs Lawrence:** It's like our seat belt signs that we see everywhere.

**Ms Mushinski:** Exactly.

**Mrs Lawrence:** And I think they're wonderful.

**Ms Mushinski:** Thank you. We'll work on it.

**Mrs Bountrogianni:** I'd like to take my turn in thanking you and congratulating you for coming here. I, too, am a mother of two, and even though you're not supposed to have cellphones, I have one in the house, and I have it here on vibrate mode because my kids call me when they get home from school. I worry about bikes. I worry about cars. You've lived, and are living, the worst nightmare of any parent, so to have the courage to come here, I really congratulate you.

I would also like to congratulate and encourage Jennifer in doing what you're doing, because for many adults, unless there's a law in place and it's heavily endorsed, it's almost too late; the habits are there. I still know a lot of people who don't buckle their seat belts, but if you can get people at a young age in this habit formation, that's key. I really congratulate you in your efforts. What a tribute to the man you lost. I would like to congratulate you.

Now, more than ever—and perhaps with the parliamentary assistant here, my question could be answered—I'm concerned with paragraph 5: "A motor vehicle engaged in work, where the nature of the person's work requires the person to ride on the outside of the motor vehicle" is an exemption.

I know in my neighbourhood, some very profitable companies have kids do lawn work and so forth all summer, and they're often in the back of trucks, hanging out like firemen. Again, they're young, they're free; they don't think anything will ever happen to them, because that is how young people, unfortunately, think.

I understand the concerns of the agricultural community, but there again I guess what I'm saying is, although I agree with the spirit of the law, if you have enough exemptions, it almost waters it down to what? I would like to honour not only these boys but also prevent others, in a meaningful way, not just in a symbolic way.

I look forward to the parliamentary assistant's presentation. Maybe she'll answer my questions.

**Mr Levac:** I'd like to start by offering my heartfelt gratitude and sympathies to you. To me, it's obvious you're here for a higher purpose, and that higher purpose is to make sure that others—and through your grief, it's amazing, and I will say that to you. It's amazing that you have risen above your grief and asked that we enact this to go beyond your children. That's just an amazing testimony to you.

What I find is that when we have these incidents come to our attention in a very slap-in-the-face way, it's a wake-up call; it's an award to us as human beings to make sure that we do what we're supposed to do and can do as legislators. So be assured that this will be done properly, and it will be done in a way that will do justice to your memories.

I want to compliment you and thank you for sharing your memories, because those are important as well. They make us laugh; they make us cry. They do the things that they're supposed to do for us, and we know that they'll never be lost to you. So I appreciate that very much, and I appreciate Mr Galt for bringing this forward as a legislator. To bring those issues to our attention is important.

So I tell you that I support this legislation, and I support its intent. As a reminder to the family, it may not be in the same form that you see it today, but it's going to be done—as Mr Galt pointed out so rightfully—so that the legislators and those that advise us, the legal departments and all of the different people that get a kick at this cat, will make sure that it's effective. That's probably more important than worrying about whether or not we get it done today. We look forward to those opportunities, and if you stay, you'll hear the parliamentary assistant give us their opinion as to where we need to go. My understanding is there will be some amendments offered to us, that we had to delay it a little bit, so be patient with us.

When we work at committee level—and I would compliment you, Mr Chairman, and the rest of us here—and I'm pretty new at this, my experience has been that it's an awful lot different from what you see over there. The fact is, when we get to this point, we roll up our sleeves and try to get the best possible legislation we can have for the people. This is stuff that protects people.

Thank you for sharing your memories, and keep them in your heart. You've shared them with me, so now they're in my heart and I thank you for that.

1700

**The Chair:** Thank you, Mr Levac. I appreciate your comments as well about the effectiveness and co-operation we have in committee. I share your beliefs wholeheartedly.

I want to thank all of you for the very poignant and courageous message you brought to us today. It's a shame that far too often laws are only implemented or changed as a result of something tragic happening, but unfortunately that's the balance you strike in a free society. You don't want to over-regulate, but in this case I applaud Dr Galt for recognizing the initiative. As a fellow Northumberlandian, I can confirm that the loss of the two young boys certainly touched the community. I want to thank you very much for coming and sharing your story with us here today.

In a way, reflecting my experience in committee, actually having another day or two for legislative counsel and the ministry, via the parliamentary assistant, to reflect on what they hear, instead of going right into

amendments, is usually more important than rushing something through.

Having said that, we'll next move to Ms Munro and hear from the ministry the nature of any amendments the ministry is considering right now. I want to thank you all very much for coming before us here today.

With that, Ms Munro, I turn it over to you.

#### MINISTRY OF TRANSPORTATION

**Mrs Julia Munro (York North):** I certainly want to convey to you my apologies for not being able to be here earlier. I appreciate the circumstances that have brought you here. It's certainly something that, as parents, none of us wishes.

I had the opportunity during the debate to speak in support of Dr Galt's bill and, in that process, had the opportunity to learn of the details and how important it is. I think a number of members have spoken about the opportunity we have with private members' legislation to bring forward issues such as this that affect people in our own communities and obviously have a very important message that we want to convey to the people of the province as a whole. I certainly was delighted that Dr Galt demonstrated this leadership in bringing forward this private member's bill.

In the opportunity I had to speak to this bill, of course I made it clear that the ministry certainly supports this bill in principle. I am going to ask that a representative from the ministry join me here, and we will go through the few amendments that will be presented. Through that process, I think you will be able to see that this is the direction in which the ministry is planning on going. If I can just ask for some help up here, please.

**The Chair:** Perhaps you could join us up in the front, please. Good afternoon. Perhaps you could introduce yourself for the purposes of Hansard.

**Mr Frank D'Onofrio:** Certainly, Mr Chairman. My name is Frank D'Onofrio. I'm director of road user safety at the Ontario Ministry of Transportation.

Good afternoon, ladies and gentlemen. If it is the pleasure of the committee, Mr Chairman, I have been listening to the comments on what other jurisdictions are doing, and I could speak to that first, if you wish.

**The Chair:** Please do.

**Mr D'Onofrio:** Various jurisdictions have taken this issue on, and they all seem to do it a little bit differently depending on their circumstances. When I say that, they are generally trying to remove the ability to ride in the back of a pickup truck, but they have exceptions according to their needs. Most recently, for example, in March of this year a new Michigan law prohibits an operator from allowing a person less than 18 years of age to ride in the open bed of a pickup truck travelling at a speed greater than 15 miles an hour on a roadway. The laws tend to be quite specific in terms of what can be done and what can't be done.

As someone mentioned, about five jurisdictions in Canada already have some form of rule on this: British

Columbia, New Brunswick, the Northwest Territories, Nova Scotia and Quebec. I know that Alberta, if it's not in place already, is looking into that as well. Again, it's a mix and match type of approach. We know that agricultural and construction sectors, as well as the parades that were mentioned, are typically the types of exemptions that are allowed to this type of law.

**Mr Galt:** Could I ask a quick question, please?

**The Chair:** Please do.

**Mr Galt:** I'm just curious about the agriculture exemptions that you're seeing in other areas. Do you have other speeds at your fingertips?

**Mr D'Onofrio:** I do not, Dr Galt.

**Mr Galt:** One of the reasons we'd set it where it was is just concern about trying to get it through and not having a big lobby from the agricultural community.

**Mr D'Onofrio:** A couple of other points really drive home what we've heard this afternoon. For example, the American Academy of Pediatrics believes the best way to reduce incidences of injuries to children riding in pickup trucks is to prohibit all passengers from riding in truck beds or in any area of a vehicle which does not have a seat and a seat belt. That's their view of it.

According to data also from the United States on fatalities by the National Highway Traffic Safety Administration, 127 children and youths aged 19 or less were killed in a single year, 1987, while riding in the back of pickup trucks, and about 1,000 more were injured annually in the US. I apologize that we don't have comparable statistics in Canada, but it gives you a sense of the scope of the problem. They also report that young people between the ages of 10 and 19 represent more than half of the deaths occurring to people travelling in truck beds. So it certainly is an issue.

**The Chair:** Could we move into the amendments you're considering as well?

**Mr D'Onofrio:** The first thing we looked at was what part of the Highway Traffic Act this new provision might best be attached to. Currently, it would be added to the section dealing with the use of seat belts. There is another section that we would recommend, and that is section 160. It has to do with towing of persons, bicycles, toboggans and so forth. There is already a prohibition on motor vehicles towing bicycles, toboggans and all of that, so it seems in the same spirit that if you're outside of the motor vehicle, you would prohibit this type of activity. That's the first adjustment.

Secondly—and I think it speaks directly to some of the discussion I've heard this afternoon regarding the scope—if in fact the interest and the concern is on pickup trucks, we would recommend really narrowing down the scope to prohibit riding in the truck bed of a commercial vehicle. A commercial vehicle includes pickup trucks, so the truck bed would be that open portion behind. What that does is get you away from issues around interpretation and what does it mean, "on the outside of a motor vehicle"? In our view, that adjustment would make it clear for police officers and others and to communicate through public education that we're talking about that

part of a truck that is on the outside in terms of the truck bed.

Thirdly, with respect to the exceptions, currently the bill has two sets of provisions. One is a list, as you know, that describes some of the exceptions that would be allowed, and it also has regulation-making power to allow for exceptions to be stated in the regulation. Our recommendation would be that all of the exceptions be dealt with in regulation so that we could have a time period where Dr Galt could have a focus consultation with the affected groups and really nail down exactly what exceptions are legitimate, let's say, which ones should be allowed, and put those in a regulation that would be under the legislation that we're talking about here. In addition, that would mean it would be best to move the effective date of the bill from "royal assent" to "upon proclamation" to allow for the focus consultation and for the filing of regulations to be put in place for the exceptions.

1710

The last adjustment that we would suggest has to do with police authority. We need in the law authority for a police officer to do three things. First is to charge the driver for the offence if the rider is less than 16 years of age. For example, you wouldn't charge a three-year-old who is in the back of a pickup truck, but you could certainly charge the driver. So you would make that explicit in the law. Secondly, obviously charge the rider if the rider is 16 years of age or over. We think that's a natural cut-off point which is consistent with the seat belt legislation. Thirdly, require a rider in the back of a truck to identify to the officer to allow for the laying of charges.

Those are the three elements of that last adjustment, and that's the series of adjustments that we would recommend.

**Mr Levac:** Thanks, Frank. You hit the last part that I wanted to come to first. Because you did that quickly, I'll come back to that one.

Regarding the enforcement, have the Solicitor General, the OPP or the OPPA, and I would assume any other groups that are affected by a change of the Highway Traffic Act—for instance, the chiefs of police etc—been consulted yet regarding the added duties that they are now going to receive as a result of this legislation?

**Mr D'Onofrio:** I know they are familiar with the bill. I can tell you that in our ongoing discussions with all of those groups in terms of protecting the occupants of motor vehicles, they are very interested in taking additional measures to restrain passengers through seat belts or child seats and all of that. I haven't seen a specific expression, written or otherwise, on this particular bill, but my understanding and our relationship with them would tell me that they would be very supportive of this.

**Mr Levac:** Can I assume that one of two things will happen, then: that your ministry directly will be doing that, or Mr Galt will be putting that as part of his consultation process?

**Mr D'Onofrio:** Certainly.

**Mr Levac:** When you say “narrowing the scope” and turning it from pickup trucks to commercial vehicles, does that broaden the scope or does that narrow the scope?

**Mr D’Onofrio:** Actually, in a way it does expand it. It narrows it in a certain way because, again, it takes you away from the concept and trying to define and interpret what is the outside of a motor vehicle. At the same time, it means any commercial vehicle, and that is certainly beyond pickup trucks.

Forgive me. I did have a corollary to that, actually, that Dr Galt alluded to earlier, which was that currently the prohibition on riding in trailers which are towed behind motor vehicles is very specific to boat trailers and house trailers, I believe. So it’s quite specific. This is an opportunity to expand the provision on restricting people who are riding in trailers that are being towed behind vehicles.

**Mr Levac:** When you mentioned section 160 and the towing, you caused me to have a flashback of memory, so I will tell the members on the other side that I wasn’t completely perfect when I was a kid. We used to do the old bus bumper rides. When the city buses would go by, you’d grab the bumper and go for a nice little skate in the wintertime. This would affect that as well, would it not?

**Mr D’Onofrio:** Currently, section 160 states that “No driver of a vehicle or street car shall permit any person riding upon a bicycle, coaster, roller skates, skis, toboggan, sled or toy vehicle to attach the same, himself or herself to the vehicle or street car.”

**Mr Levac:** So my shoes don’t count. Good. Maybe I can still bumper-hitch on buses.

**Mr Mackey:** Too hard on mitts as well.

**Mr Levac:** I mean, as a child we did those things, but obviously in this instance the—

**Interjection:** You hit your head a few times?

**Mr Levac:** Well, I did take a couple of tumbles. But in respect of the seriousness of it, I’m assuming that would probably be inclusive of this type of thing that you’re looking at regarding the section, that these types of activities that unfortunately cause us great grief at the wrong time can be applied to this legislation because of the broadness of it.

**Mr D’Onofrio:** Yes.

**Mr Levac:** I appreciate that, and I was trying to bring this to a serious point.

For me, when you said that the exceptions are now going to be looked at in your amendment, you’re recommending that we shift it to regulation completely. I personally may have some problem with that because as much as I know that the intention is not to dilute the importance of what’s being offered here—and I think talking to what Doug is saying about the farm community, there may be a little bit of resistance to that even though we may be able to roll it into a regulation. We always have this discussion at legislative levels about what should be a regulation and what should be in the meat of the bill to make sure that we drive home that this particular thing can’t get changed, can’t be interpreted in

any other way. Do you see any concerns with some of the exceptions that should actually stay where they are in order to appease or to satisfy the groups of people who may say, “Wait a minute,” or “I really need this exemption”?

**Mr D’Onofrio:** I think there are. I’ll give you an example. The Ministry of Labour, under their occupational health and safety legislation, has some very specific forums where they discuss with particular groups, firefighters and otherwise. Those tend to be evolving. We are always trying to improve the safety related to that. As you know, firefighters used to be allowed on the back of the truck, so that has been narrowed down. I think having these types of exceptions in regulation allows one to keep up with those types of positive developments in a much better way than entrenching something in the law. An example is the 60-kilometre-per-hour requirement. It’s our understanding that the Ministry of Labour is trying to move to a more stringent standard that the cut-off is 17 kilometres per hour for riding on the back of garbage trucks, which is a North American standard that’s developing.

That’s the type of tension you end up with if you try to put too many specifics in the legislation, as opposed to allowing it to evolve in the regulation.

**Mr Galt:** Just in the discussion, if I may, if we talk with the farm safety association or council—I may not have quite the right handle—they might ratchet this down much further than we would ever dream of. They would be the ones, along with maybe the Ontario Federation of Agriculture, that we should consult with, looking at a regulation. I’m quite comfortable with that. I believe the families’ feeling is that 60 is way too high.

I have had no objections from the agricultural community at all, and there has been a lot of publicity about this in my home area.

**Mr Levac:** I appreciate that.

**Mr Galt:** I think maybe the farm safety group would really ratchet this down for us and maybe we would get it down a lot further by consulting.

**Mr Levac:** I am assuming that the consultation process, along with the amendments being offered, is what we’re after, to find out whether or not they even want it there, and, if they do want it there, what those numbers should be. I appreciate that very much.

The question was basically if there is one that over-ridingly comes back to the surface, saying, “I’m sorry, I don’t want this in regulation. I want it to be a bill. I want it to be the law.” That’s the part I’m talking about, and if you could identify it or if you have identified it.

What I hear you saying is that you’d rather shift all of the exceptions and this type of wording to regulation to accommodate that discussion. But at the same time, I hope you’re open to the fact that somebody may come and present who says, “I’m sorry, I don’t want it in regulation, because it provides too much of an opportunity to change it. I want it entrenched in law, in the bill.” There might be examples of that, and I know there are. I’d have to look them up. There are people who say,

"Don't give me regulations; give me the law." That's all I'm pointing out, that there might be that exception that comes to the table when the consultation takes place.

I'm finished, Mr Chair.

**The Chair:** Thank you. Mr Galt, you had a question?

**Mr Galt:** Depending on the committee's support on this, I'm flexible in looking at these various amendments that have been suggested by the ministry. The one I'm concerned about and interested in, and I'm sure the families are, is how we would put this in to call or make reference to this as the Bart and Jay clause. Would you bring it forward? I think it would be a great healing process for the families.

**Mr D'Onofrio:** I will take that back, certainly, and work with our legal services on it.

**Mr Galt:** From a ministry point of view, do you see it as any kind of difficulty?

**Mr D'Onofrio:** We can work on that.

**Mr Galt:** We can have the act called that. Would it appear in the Highway Traffic Act as well?

**Mr David Milner:** The individual act would have a name, but we wouldn't name a provision or a section of it.

**Mr D'Onofrio:** So it would be the act itself. Then it gets incorporated into the Highway Traffic Act.

1720

**Mr Martin:** Just on that point, I brought a bill forward on regulating franchising in the province. I believe we made the short title of the bill the Arthur Wishart Act, and there seemed to be no difficulty with that.

**The Chair:** It was the first time I think we had done that, and we've since done it one more time. But you're quite correct, Mr Martin: it certainly established the precedent, in this committee in fact.

**Ms Mushinski:** I just have one question, and it has to do with the policing. Once the act is passed, upon proclamation, the exceptions are going to be considered. Does that mean that the act is not itself in full force and effect for policing purposes until those exemptions are passed by regulation?

**Mr D'Onofrio:** Yes, that would be the plan, upon proclamation, which would allow for the time to do the focus consultation and file the regulation.

**Ms Mushinski:** For the benefit of everyone here, can you give us some idea as to how quickly those regulations could come back in order to expedite the passing of the act?

**Mrs Munro:** Perhaps I could respond to that. It's very difficult, insofar as obviously you're also looking at doing some further consultation with Dr Galt. Then following on that would be the opportunity to look at what regulation should be put in place from there. To answer your question, it's obviously difficult, because it's dependent on those two processes taking place.

**Ms Mushinski:** OK. But you'll take note of the need for dealing with it?

**Mrs Munro:** Absolutely, and I'm sure that Dr Galt would agree with me that in taking on further consultation in this specific area, he would want to have those

done as quickly and as timely as possible. Certainly the ministry would also want to respond in a timely way.

**Ms Mushinski:** I have just one more question. With respect to new police authorities, when acts like the Highway Traffic Act are amended, where there are reciprocal agreements with other jurisdictions, like the United States, certain states in the US and other provinces, would this automatically become a part of any reciprocal agreement?

**Mr D'Onofrio:** No. Generally the requirements of road safety in the province are such that when people from outside of Ontario come into Ontario, we would expect them to conform to our laws, and this would be one of them. That begs the issue of education and letting people know that in Ontario this is the law, that when you come into Ontario you can't be riding in the back of pickup trucks, and that would be our approach in this regard.

If I could add, in terms of your earlier comment, getting the bill to royal assent is really important for us in terms of public education. Even though it's not yet proclaimed, it allows us, through our marketing efforts, to work with our local partners to get the word out. When we know it's going to be law, then we can be out there really pushing the educational aspect of it, and the police can do their educational enforcement as well.

**Mr Levac:** But not before.

**Mr D'Onofrio:** Not as easily before.

**Mr Galt:** If I could just comment on time frame, looking at time frame here, if we could get these amendments through, the committee meeting between now and the end of June, as we wind up the session, often it's automatic third reading, like on the 28th, as we shut down, probably. Then it would be an official bill and receive royal assent. It would probably take most of the fall to bring various groups in, whether it be firemen, the agricultural group, construction and so on, and it will probably be the end of the year by the time the regulations would be in place. I'm looking at a realistic time frame to make all that happen. Does that seem in keeping with you, Mr D'Onofrio?

**Mr D'Onofrio:** That sounds reasonable, Dr Galt, yes.

**Mr Galt:** I like what you were saying a few minutes ago. If it gets passed on June 28 and royal assent shortly thereafter, then that gives the ministry the opportunity to promote and talk this up, which is a big half of what we're after anyway.

**The Chair:** Mrs Bountrogianni.

**Mrs Bountrogianni:** First of all, Mr Chair, as women's issues critic for the Liberal caucus, why does Doug get to keep his title of "Dr," and I lose mine?

**The Chair:** He's my seatmate, and he keeps reminding me.

**Mrs Bountrogianni:** Ah, OK. Well, I'll put a card under your nose next time. We're not supposed to be doing that.

**The Chair:** Ask the Speaker.

**Mr Levac:** Dr Bountrogianni?

**Mrs Bountrogianni:** No, "Mrs" is fine, but he should be "Mr" if I'm "Mrs," right?

**Ms Mushinski:** Not to mention the fact it's said by a man.

**Mrs Bountrogianni:** Good point.

I guess my question, to clarify, because I am concerned about the exemptions: you say you would like royal assent so you can educate the public. But what are you going to educate the public on if the regulations haven't been set? In other words, will it be a general sort of education: "Don't ride in the back of trucks"? Won't there be a lot of confusion in the agricultural community, which is perhaps expecting an exemption, and in any work community that is expecting an exemption? Won't there be that kind of confusion before the regulations are set, and are you not concerned about that?

**Mr D'Onofrio:** It's a fair point, but I think just getting the message out generally, and if those persons within the affected industries that might end up with an exemption are willing not to practise this any further, obviously we are further ahead in terms of safety. Getting the general message out that riding in the back of pickup trucks is not a safe practice—it may need to be accommodated for industry, for specific purposes, but let's get the message out there as much as possible and see what we can do in reducing the preponderance of this happening.

**Mrs Bountrogianni:** Fair point. Again for clarification, you listed the strengths—flexibility being one—of having the exemptions in the regulations. In your experience at the ministry, is there any downside to having exceptions or anything in regulations rather than in the bill itself?

**Mr D'Onofrio:** I think flexibility is the overriding feature we come back to. It allows you to keep up with standards as they evolve.

**Mrs Bountrogianni:** Just as a point of clarification on another bill, I was under the impression that kids were supposed to wear helmets when they are riding their bikes. Did that law actually get proclaimed?

**The Chair:** Yes, it did.

**Mr Galt:** There's an age on that of 18.

**Mr Levac:** Sixteen.

**Mr Galt:** Sixteen. So adults can be silly, but children can't.

**Mrs Bountrogianni:** So sixteen and under have to wear helmets.

**The Chair:** Any further questions?

**Mr Miller:** I have a question to do with the amendment, point 2, Mr D'Onofrio. You said you were going to

make an amendment to change it to the truck bed of commercial vehicles. Is that correct?

**Mr D'Onofrio:** Yes, sir.

**Mr Miller:** Does that mean private vehicles would not be affected by this law?

**Mr D'Onofrio:** It seems odd, but all pickup trucks are defined as commercial vehicles in the Highway Traffic Act, so they would all get captured in this.

**Mr Mackey:** Is there not now something that says that if you use a Slow Moving Vehicle sign, you're not to exceed 40 kilometres per hour?

**Mr D'Onofrio:** That's only allowed for self-propelled implements of husbandry, so it's really on farm vehicles that the Slow Moving Vehicle sign is allowed. It wouldn't be allowed on a regular pickup truck, for example.

**Mr Galt:** I think he has a good point. Would that be a way of dealing with this, possibly in regulation, if they are going to ride in a half-ton truck at slow speeds, to have the Slow Moving Vehicle sign on it?

**Mr D'Onofrio:** We could look at that. It would mean changing the law in terms of where a Slow Moving Vehicle sign is currently allowed.

**The Chair:** Any further questions? Seeing none, I want to thank everyone for their contributions here and remind everyone that we will try to deal with the amendments next Monday, after we have held clause-by-clause consideration of Bill 25.

**Mr Galt:** Just for clarification, Mr Chair, I believe that around the table there's agreement on the suggested amendments. We'll circulate them prior to them being at a meeting, but my understanding is there is general agreement with what MTO—Mr D'Onofrio—has presented.

**Mr Levac:** I'd like to see them before.

**Mr Galt:** I'm not nailing you down; just the general principle of what's coming forward.

**Mr Levac:** You have to know that I have concerns about the regulations.

**Mr Galt:** Yes.

I would like to thank all the committee members for being so supportive on this particular private member's bill that we're putting through, as well as, again, all the presenters, particularly the family, for doing such an excellent job.

**The Chair:** Thank you, Mr Galt. Indeed, thanks to all the committee members and to everyone who came down to participate or to listen to our deliberations.

The committee stands adjourned until Wednesday at 3:30.

*The committee adjourned at 1730.*

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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 13 June 2001

# Journal des débats (Hansard)

Mercredi 13 juin 2001

**Standing committee on  
general government**

Public Service Statute Law  
Amendment Act, 2001

**Comité permanent des  
affaires gouvernementales**

Loi de 2001 modifiant  
des lois en ce qui a trait  
à la fonction publique

Chair: Steve Gilchrist  
Clerk: Anne Stokes

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Wednesday 13 June 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Mercredi 13 juin 2001

*The committee met at 1608 in committee room 1.*PUBLIC SERVICE STATUTE LAW  
AMENDMENT ACT, 2001LOI DE 2001 MODIFIANT DES LOIS  
EN CE QUI A TRAIT  
À LA FONCTION PUBLIQUE

Consideration of Bill 25, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act, 1993 / Projet de loi 25, Loi modifiant la Loi sur la fonction publique et la Loi de 1993 sur la négociation collective des employés de la Couronne.

**The Chair (Mr Steve Gilchrist):** Good afternoon. I call the committee to order as we conduct our hearings on Bill 25, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act, 1993.

My apologies to the folks assembled here to present and to witness. As you may know, the House rules preclude the committee sitting while routine proceedings are taking place in the House. Now that they are finished, we can commence.

ONTARIO PROVINCIAL POLICE  
ASSOCIATION

**The Chair:** Our first presentation will be from the Ontario Provincial Police Association, Brian Adkin. Good afternoon and welcome to the committee.

**Mr Brian Adkin:** Good afternoon, Mr Chair, Madam Clerk, members of the committee. My name is Brian Adkin. I'm the provincial president of the Ontario Provincial Police Association. With me to my right is Walter Tomasik, who's our chief administrative officer.

The OPP Association is the collective bargaining agent for all uniform members of the OPP, from cadet to sergeant major. We represent approximately 5,200 men and women, who are stationed throughout Ontario, and 2,200 retirees. Our association has been in existence since 1954. We're located in Barrie, Ontario. We have our corporate head office at 119 Ferris Lane, and we employ 15 people to look after our members' interests. We also fund and maintain 20 local branches throughout Ontario, which hold monthly meetings for their members. Our members provide front-line policing services in over 400 municipalities, as well as providing specialized

traffic patrol, criminal investigation and special assistance to the public and police services throughout Ontario.

We're extremely proud of the working relationship between our uniform members and the civilian support staff within the OPP. The civilian members of the OPP are integral to the OPP and have helped us to become one of the most respected forces in the world.

We are very proud of our relationship with our employer and our labour relations record, which is commented on by many police leaders and outside businesses as being a model. We're also proud of our relationship with members of the Legislature, as many representatives from your respective parties have called us over the years to ask for our support on various bills and policies.

Our civilians work at detachments, branches, units, regional headquarters and general headquarters side by side with our members each day. They develop close working relationships with our members and share their successes and their tragedies. Our civilian members are affected by the death and injuries to our members as much as our members' uniform colleagues.

Police issues are common to uniform and civilian members. It becomes especially important to have strong and focused advocacy for support of issues affecting policing. We feel that the implementation of Bill 25 will entrench the bond and only enhance the already excellent relations between civilian and uniform members.

As many of you are aware, our municipal counterparts do represent their civilians as their bargaining agent of record. The Ontario Provincial Police Association is the only police association in Ontario that does not represent its civilians. This act provides for that opportunity.

Civilian members within the Ontario Provincial Police have asked many times to become members of the OPPA. More recently, the Chair of Management Board of Cabinet has received in excess of 1,000 letters from OPP civilians asking to join the OPPA. The legislation provides the civilian employees of the OPP an opportunity for a fair and democratic choice as to whom they want representing them. This legislation goes beyond the ability for civilians to choose their representative. It addresses a number of other issues that have been problematic in the past. These issues include costings for policing services, amalgamations of police services, strikes and the ability to provide an uninterrupted, seamless work environment.



The OPPA has for a long time supported the opportunity for civilian members to become members of the Ontario Provincial Police during discussions around municipal costings and police service amalgamations. The OPP civilians have attended many meetings with their uniform colleagues to deal with costings without any representation by their union. The OPPA helped whenever we could, but civilians repeatedly asked for our representation.

Municipal police service members who were accustomed to being a member of a police association, upon becoming members of the OPP, were not allowed to join the OPPA and became members of OPSEU. We believe the OPP, being a large organization, has a tremendous capacity for flexibility in the way it can accommodate civilian entry. Currently, not all civilian members are taken on by the OPP during amalgamation. This tends to make the transition for civilians uneasy, as there is some uncertainty as to what lies in store for the individual.

The potential for strikes has also been very problematic for the OPP. Each time a contract expired, our civilian members became part of essential service negotiations. All of our members are essential and we require them to meet our policing requirements for the public each day. The 1996 strike was very disruptive to the OPP and public safety. The implementation of Bill 25 will provide a level playing field for all police personnel who are taken on by the OPP. The civilian members of these services will now have the stability of knowing their futures are secure and that they have fair and equitable representation within the service.

For many years our civilian counterparts have worked side by side with the uniform members of the Ontario Provincial Police. From time to time, these individuals were faced with the difficult task of having to confront their uniform associates on the picket lines. As you can appreciate, a good many of our civilian counterparts were opposed to this type of confrontation.

We view our civilian employees as essential to the safe operation and delivery of policing services throughout the province of Ontario. The stability Bill 25 brings will ensure that the people of this province get the best, seamless delivery of policing services available.

The amendment of the Crown Employees Collective Bargaining Act and the Public Service Act will provide the civilian employees of the OPP a democratic choice to choose their representative bargaining agent. Bill 25 is about making a choice. It's about giving people the right to decide whom they want to represent them.

We would like to thank the government for introducing legislation and dealing with a very difficult issue. We thank you for giving the OPP civilian employees a choice. We ask all parties to support the bill. Allow the employees to decide what is right for them.

We'd like to thank you for providing our association the opportunity of addressing the committee.

I have two letters I'd like to read in, Mr Chair. I think I'm within my time limit.

**The Chair:** You still have about four minutes, so that's fine.

**Mr Adkin:** I have a letter in our handout.

**Mr Dave Levac (Brant):** On a point of order, Mr Chair: In terms of the letters being read, we all have copies of those and we could read them. We'd like to have an opportunity to pose a question in case the time expires.

**Ms Marilyn Mushinski (Scarborough Centre):** They're attached.

**The Chair:** Mr Levac, it's always at the discretion of the presenters to decide how they split their 10 minutes.

**Mr Levac:** I'm asking Mr Adkin to allow us to read them.

**The Chair:** Now he is aware of your interest, but at the end of the day, if they want those recorded in Hansard, this is the only way he can do it.

**Mr Adkin:** Is that affecting my time, Mr Chair, that question? Is that within my time?

**The Chair:** I'll add another 30 seconds.

**Mr Adkin:** Thank you. This letter is dated June 12 and it's addressed:

"Ladies and gentlemen of the standing committee on general government:

"Please allow me to introduce myself. My name is Kelley McDonnell and I am currently employed as a civilian with the Haldimand-Norfolk Ontario Provincial Police. I perform administrative duties and am currently classed as an OAG8.

"I commenced my employment with the OPP on December 15, 1998, following the amalgamation of the OPP and the former Haldimand-Norfolk Regional Police Service. I was employed as a civilian member with this police service for 18 years.

"From 1994 to 1998, I served as a civilian director of the Haldimand-Norfolk Police Association. It should be noted that this association remains active in order to represent former members in matters relating to the amalgamation, and I still hold this position.

"As a civilian representative, I attended numerous meetings hosted by the Police Association of Ontario that dealt with concerns specifically relating to police and civilians' issues throughout the province. The OPPA is the only association in the province of Ontario that does not represent their civilian members.

"As a member of a police association, I expected the board of directors to properly represent members on all matters concerning wages and working conditions. My experience was that the civilian members had confidence in our association's ability to properly represent them. The board of directors was comprised of police and civilian employees. This board was responsible for addressing concerns relating to both police officers and civilians.

"Since joining the OPP, I have been forced to become a member of OPSEU. I have never been a member of a union before.

"In early 1999, very shortly after coming over to the OPP, I was informed by an official of OPSEU that if I



did not sign a membership card, my local union would not represent me if I had issues that needed to be addressed. I was advised that I would have to contact the head office on my own and deal directly with them. During this time, I was also faced with the possibility of being forced to go on strike, which was something that I never had to experience before.

"Since the amalgamation there was an issue raised by some civilians to an official of OPSEU. As a result, I do not feel that our concerns were met with any real desire to assist us.

"In closing, I feel that the unique needs of the civilian members would be better served by the Ontario Provincial Police Association, people we work with who know and understand the problems experienced by their civilian co-workers on a daily basis."

It's respectfully submitted by Kelley McDonnell.

The last letter is dated June 13, 2001, and it's from two of our employees at the Brant county detachment, which is located in the town of Paris. It's addressed the same as the former letter.

"At this time we would like to advise you we strongly feel we should be represented by the Ontario Provincial Police Association. The OPPA is familiar with the police environment in which we work daily. We are the only civilians in police work that are not represented by the same association as the officers.

"We feel they better understand our issues. OPSEU represents so many different areas that they cannot focus or understand some of the things we deal with on a day-to-day basis. It would allow us to be represented by people familiar with our day-to-day problems and situations.

"We feel that the police association board of directors would properly represent members on all matters concerning wages and working conditions. From what we have heard from other civilians represented by their police association, the members have confidence in the association's ability to properly represent them. The board of directors is comprised of police and civilian employees. They would be responsible for addressing concerns relating to both police officers and civilians."

It's submitted by Roberta Scottie and Kimberly Thomson of Paris. Thank you, Mr Chair.

**The Chair:** Mr Levac, we've got about a minute and a half for a question and the response.

**Mr Levac:** I will be very brief, Mr Chairman. Thank you for your indulgence.

Mr Adkin, are you aware of what an orphan bill is?

**Mr Adkin:** No, I'm not, Mr Levac.

**Mr Levac:** An orphan bill basically says that there are pieces of legislation that are acceptable to most people and they surround it with other pieces of legislation that are not palatable. For your information, I have contacted the OPPA in my area and indicated to them that a free vote of that nature would be acceptable to me, and, having that understanding, I also indicated I would not be voting for the bill because of the rest of the pieces of that legislation.

Are you aware as well that there are concerns, that other members of the civilian OPP have differing opinions about whether or not they should or shouldn't be represented by the OPPA or OPSEU?

**Mr Adkin:** That's what the bill is all about, Mr Levac. It's about choice.

**Mr Levac:** Correct. I appreciate that very much. I just wanted to go on the record with that.

**The Chair:** Thank you, gentlemen, for coming before us here today and making your presentation.

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#### WILLIAM ROBINSON

**The Chair:** Our next presenter will be Eva Robinson. The clerk advises me that we have not as yet seen Eva Robinson. How about William Robinson?

**Mr William Robinson:** Yes.

**The Chair:** Come forward, please. Good afternoon and welcome to the committee. We have 10 minutes for your presentation as well.

**Mr Robinson:** I can assure you I will not be 10 minutes. I'd like to say first of all that I'm very honoured to be here and to have an opportunity to speak. I am very nervous, simply because this is a theatre that I'm not used to by any means.

What I would like to say, however, is that I know in my local people have been feeling disenfranchised from the process for a long time. I know myself that over the last five to six years, I sense a real divisiveness between my representation and my government.

I'm a kid who was raised on "Give us a place to stand and a place to grow," and it's confusing for me when I see two sides always appearing to go at each other. I know that what I'm saying sounds somewhat idealistic, but I don't feel that. Deep down, I feel that it's important that people say what they feel. I haven't said anything in the last six to seven years. I've tolerated things, I've gone on, I've read the paper, I've listened to the back-and-forth. The one thing I haven't heard is the voice of reason back and forth between the parties.

As a person who has lived in Ontario all his life, I'd like to think that somehow we can reach a level of understanding that we've lost. I know I sound like I'm preaching, like I'm on a soapbox, but I'm not. What I'd like to feel is that the people of Ontario work together, and they work together in a way that makes things better.

I don't necessarily like the fact that I'm represented by a certain union, but I also know it's the only protection I have with my employer sometimes, and it allows me to speak freely. I'm very fortunate to have this opportunity to speak freely. I know that I may not be articulating what directly speaks to the bill, but I do want you to understand that it's very important for me as a citizen of Ontario to say to you please focus on the needs of the people themselves.

People in my local don't even understand the full ramifications of this bill. There needs to be some public understanding. These people work for the government



and they don't understand it. I know people have their agendas, their beliefs, their ideals, and I know you all have vision. You have visions for your party or the vision that you believe in a particular thing, and that's what drives us, that's what we believe in. But just for a moment, look at the overall vision, the vision for the people of Ontario that you represent. You care about those people or you wouldn't be here. I just think it's really important that you get out and listen to them and what they have to say.

That's all I have to say, and I hope that somehow it strikes a chord with some of you. It may seem like, "Who is this loon?" But between you and me, I just think it's important that it be said.

**The Chair:** Thank you very much, Mr Robinson.

**Mr Robinson:** You're welcome.

**The Chair:** Are you prepared to take questions?

**Mr Robinson:** I am.

**The Chair:** Mr Kormos, you can have the first three minutes.

**Mr Peter Kormos (Niagara Centre):** Very quickly, your submission will probably end up being the most eloquent of the day. I appreciate your coming here. I've listened carefully, as I'm sure the other people around this table have. Thank you very much.

**The Chair:** Any questions from the government members?

**Mrs Marie Bountrogianni (Hamilton Mountain):** I'd also like to thank you for coming. No, you're not a loon. In fact, I hear that everywhere I go. I have people from all political parties saying, "What's happening to this province?" I hope you have struck a chord within everyone around this table, not just a few of us. Thank you.

**Mr Norm Miller (Parry Sound-Muskoka):** I'd like to thank you for coming in and voicing your opinion today. We'll try to work with the other parties as reasonably as we can. Thank you.

**The Chair:** Thank you, Mr Robinson, for your articulate presentation. You demonstrated just how easy it is to come into this building and share your points of view. Thank you very much.

CINDY BAHM

**The Chair:** Our next presenter will be Ms Cindy Bahm.

**Mr Kormos:** Perhaps we should let folks know there's coffee and tea for them over there.

**The Chair:** Absolutely.

**Mr Kormos:** They can make themselves at home. After all, you paid for it.

**The Chair:** Good afternoon and welcome to the committee.

**Ms Cindy Bahm:** Thank you. Good afternoon. My name is Cindy Bahm, and I'm honoured to have this opportunity to speak to the committee today in support of Bill 25; in particular, to the amendments which will allow OPP civilians the opportunity to choose to be

represented by the Ontario Provincial Police Association. I am speaking today not only on my own behalf, but on behalf of hundreds of OPP civilians across Ontario who also support this bill and are unable to be here today.

For the past 16 years, I have enjoyed a career as an administrative assistant with the Ontario Provincial Police and currently work at the North Bay detachment. I take pride in the role that I play and all other civilians play as well in the policing of this province, from the day-to-day running of police offices at all levels, to providing assistance to members of the general public and victims of crime and to the dispatching of emergency services in times of need.

Our role historically has always been taken for granted—that is, until 1996, when OPSEU exercised its newly acquired right to strike. You see, only a handful of OPP dispatchers were considered essential workers, and so it was in March 1996 when OPP civilians were denied access to their workplaces and their legal right to work by OPSEU picket lines; and because of that, it was in March 1996 when the citizens of Ontario were unable to access policing service as they had come to know it.

People requiring police assistance were unable to reach OPP staff by telephone; victims of crime were delayed and sometimes even denied access to police offices. Worse than that, the safety of all citizens was jeopardized by a limited number of dispatchers being expected to work beyond their capabilities in addressing reported emergencies and also by the lengthened response times of uniform officers responding to calls for assistance because of picketers preventing safe passage through picket lines at detachment buildings.

The people of Ontario deserved better. They did not deserve pickets flashing them in the face, as I'm sure those of you who may have experienced this same thing here at Queen's Park didn't either. OPP civilians were not impressed with the way the public and our uniform officers were treated by those picketers, and I for one certainly didn't condone that behaviour.

So it was in March 1996 when I began a campaign for the right for OPP civilians to be represented by the OPPA. It was an idea that started off as a whispered dream and which has evolved into a very public and effective campaign for democracy for OPP civilians who are now realizing that this dream is very close to becoming reality.

We have overcome many obstacles over the years to get to where we are today in our pursuit of OPPA representation. Personal communication outside the workplace between civilians scattered across an entire province was a major hurdle that was overcome by patience, perseverance and creativity and eventually resulted in an effective personal information networking system which continues to keep civilians informed today.

We have done our homework over the past five years. We have written many letters to government officials in support of legislation such as Bill 25 and have spoken to many people about OPPA representation. I myself have spoken with civilians with many years of experience and



to some with only a few years' experience. I've talked with civilians from municipal police services about the representation they enjoy from their respective police associations. I have spoken with civilians who used to work for municipal police services and are now employed with the OPP. I have spoken with uniform members of all ranks and I have also spoken with executive members of the OPPA. All communication on this subject has been positive and only reinforces the desire to join the OPPA family.

I have also taken advantage of many opportunities to experience first-hand what kind of organization the OPPA is and how they do business. I have attended OPPA functions at local and provincial levels, and I like what I see. I have shared this valuable insight with as many of my civilian counterparts as possible, and I have no doubt whatsoever who I want to represent me.

To give myself some credibility, I don't speak against OPSEU representation without some knowledge of the organization. Besides being a dues-paying member for the past 16 years, I was an active member of a local for a few years as a shop steward. I saw how things worked, and I was exposed to their philosophy of how to achieve in the world of labour. It was actually during a steward workshop I was attending, during an emphatic display of solidarity, that I realized I did not believe in, let alone could I participate in, the aggressive style of business they conducted.

MPP Peter Kormos, representing Niagara Centre, recently spoke in the Legislature in opposition to Bill 25, stating that it would rob "over 2,000 public sector workers of their status as members of a bona fide trade union, OPSEU ... a trade union that has proven over and over again that it will go to bat for its employees and it will fight for them and it will negotiate contracts for them, that it will fight to retain their right to strike for them."

Some 20-odd years ago, well before Bill 25, OPP dispatchers made an attempt to leave OPSEU but were unsuccessful. Since that time, OPSEU has had the opportunity to go to bat for us and fight for us. The result has been over 1,000 letters written to Management Board by OPP civilians asking for the opportunity to choose the OPPA to represent us.

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What that tells you is that we are not adequately represented by OPSEU now, nor have we been in the past, nor do we expect to be in the future. We have no voice and no say in matters that are important to us. On a provincial scale, we are about 4% of the OPSEU membership which, in itself, gives us no opportunity to be heard. However, our numbers are further dispersed throughout locals scattered across the province, making us invisible within the OPSEU organization.

OPSEU prevents us from doing our job and from performing our role in the policing of this province, and we don't like it. The reasons for wanting out of OPSEU are as varied as the people you ask. Besides wanting to be on the working side of a picket line, we want to attend OPP Association meetings where discussions have some

relation and meaning to us. We want to enjoy the convenience and luxury of having a representative in every workplace, someone to bring our concerns to, and then the opportunity to have those concerns brought forward for resolution in the professional manner that the OPPA does business. We want to attend association meetings that talk about our business, the business of policing. Having police-oriented representation will ensure understanding of the issues which affect us. The people of Ontario will be better served by an OPP that works together under the OPPA. They have the respect of you, the politicians, and respect you in return.

I appear before you today and ask that you consider my comments as those echoed by the hundreds of OPP civilians in support of Bill 25. We anxiously await the opportunity to vote for OPPA representation and ask that the bill be passed so we may do so.

In conclusion, I would like to thank this government for putting forth a bill that will give our OPP civilians the opportunity to represent the people of Ontario in a more professional manner.

**The Chair:** Thank you very much. That leaves us time for one question. This time it will be the government benches. Mr Tascona.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** Thank you, Mr Chairman. From what I can understand from your presentation, on page 7 it would appear that rather than having a separate bargaining unit of individuals, the OPP civilians, OPSEU essentially set you up in different locals across the province.

**Ms Bahm:** That's correct.

**Mr Tascona:** So you're interspersed with other members of OPSEU. What I want to ask you has two parts, but I'll put it in one question. I take it you believe that you'd have a better community of interest if you go the route of trying to join the OPPA through the labour relations board procedures and that you would be looking to set up one bargaining unit for your particular group?

**Ms Bahm:** And the question is?

**Mr Tascona:** That's the question: what you are envisioning. Do you feel that you have a community of interest with the OPPA?

**Ms Bahm:** I envision better representation for us as a group as members of the OPPA.

**Mr Tascona:** How would you see that representation taking shape, as a separate bargaining unit or as a part of the OPPA as a bargaining unit?

**Ms Bahm:** Well, I believe we would mirror other police associations and other municipal police agencies as well, but that's not something I'm all that familiar with.

**Mr Tascona:** OK, that's fair.

**The Chair:** Thank you, Mr Tascona, and thank you, Ms Bahm, for your presentation and for coming all the way down to appear before us here today.



## RON MARCINIAK

**The Chair:** That takes us to our next presentation, from Mr Ron Marciniak. Good afternoon, and welcome to the committee.

**Mr Ron Marciniak:** Good afternoon. Thank you, Mr Chair. Ladies and gentlemen of the committee, my name is Ron Marciniak. I work for the Ontario Ministry of Municipal Affairs and Housing as a systems officer.

I am honoured to be here today to represent the members of OPSEU and to present the concerns of my co-workers who serve in the Ontario public service as they relate to Bill 25, specifically section 5, which changes the delegation of duties and powers.

Most of us enter the public service to make a difference. Public service is a noble profession, and we are proud of the services we provide to the citizens of Ontario and genuinely care about those we serve.

I have been a member of the Ontario public service for nine years, and in those nine years my work has been led by experienced, responsible senior public servants. We understand, all of us, the balance between responsible fiscal stewardship and the delivery of services and programs. It is our business. We are all accountable.

We do not always agree with the direction our political leaders wish to take, but as Dwight D. Eisenhower said, "Never confuse honest dissent with disloyal subversion." That being said, I'm at a loss as to how the citizens of this province will benefit from having the powers and authority of trusted public servants given to another person or persons who do not share our vision of service without profit.

The basic economic principles of supply and demand have no place in the public service. We do not close up and leave town if our services are not making money. Our services must continue to be available to those who need them. We, all of us, are responsible for Cicero's greatest law: the good of the people.

In the Ontario public service, we have very clear conflict-of-interest guidelines to prevent corruption and to make us accountable to the taxpayers. We are reminded of them every day when we log on to our computers. We must agree to not use government resources to make a profit. OPSEU members do not receive corporate perks, nor are we allowed to accept gifts from clients for a job well done; if we do, it is grounds for a dismissal. That is part of our proud service record and is a testimony to the importance of the work we do.

It seems to me that it would be impossible for private employers who have to report to a corporate board of directors to adhere to those same guidelines. The deputy minister, assistant deputy minister and I all have the same rules; these other people will not. None of us is naive enough to think that profit is not the motive in the private delivery of public services. To allow these people to establish rules or requirements further endangers us all.

Our collective agreement allows for the establishment of a local or ministerial employee relations committee where matters of mutual concern are discussed and

resolved between OPSEU leaders and senior managers. This is the forum for us to raise issues of propriety, whether they be working conditions, program delivery or labour relations. We are very concerned about the lack of accountability in all of these areas and how it affects our working lives and the lives of our client groups should fee-for-service individuals or private sector companies manage public servants.

The people I work with in the Ministry of Municipal Affairs and Housing are public-spirited and ethical. We work hard. We remain dedicated in the face of our services being downloaded, privatized or shared. Consistently over the last six years we have maintained a high level of service to our clients and delivered needed programs in spite of this uncertainty.

We no longer fear change. What we do fear is a public service that is dedicated to profit, where there is no accountability to clients, just shareholders. We dread the thought of having delegated persons, motivated by the bottom line, deciding how a program should be delivered. We challenge the idea of giving the professional public service to a private sector company which gets inspiration from using the public purse without public accountability.

Justice Brandeis wrote, "Our government is the potent, omnipresent teacher. For good or for ill, it teaches the whole people by its example." Please do not allow Bill 25 to pass unaltered. The Ontario public service must remain an example of ethical, accountable and responsible service. Thank you.

**The Chair:** Thank you very much, Mr Marciniak. That leaves us about three minutes. I'll give the time to the Liberal Party. Mrs Bountrogianni.

**Mrs Bountrogianni:** Thank you for your submission. I would think the government would have learned from Walkerton what could happen with privatization.

Do you have any examples or evidence of your statement that when you privatize you lack accountability, other than the statement itself?

**Mr Marciniak:** None certainly as severe or serious as the Walkerton affair. The only offer I could make would be a long battle to eliminate fee-for-service consultants who were around for 10 years and finally turning the work over to where it belonged, to public servants, OPSEU members. It should have been there all along. So you were paying a big dollar for something that shouldn't have been there.

**Mr Levac:** Thank you for your presentation; I appreciate it. You also mentioned a concern about what the real feel is for the public service. Do you have the history or any kind of research that showed you why the public service was invented in the first place, to avoid the things you mentioned regarding not taking gifts, having to report the type of thing you talked about? I would assume it implies slipping a \$50 under the door and saying, "Do something."

1640

**Mr Marciniak:** No, I'm sorry, I don't.



**Mr Levac:** Historically, there is a document that proclaims that even when governments need to hear this from public servants, this has to be this way in order for them to keep them on the straight and narrow, to avoid the conflicts you were talking about earlier. That's just a statement, but if you want to respond to that, I would welcome that. It's another opportunity for you to reinforce your concern about what the private system, in comparison, could do.

**Mr Marciniak:** The only thing I could offer there is that as a public servant for nine years—and my entire career prior to that in the private sector—I've certainly changed my outlook of what it means to be a public servant. I didn't understand coming in; I understand quite clearly now that what I do is to serve the public; it is not for profit, it is not for the bottom line. I'm proud of that.

**The Chair:** Thank you, Mr Marciniak, for coming before us here today.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 364

**The Chair:** Our next presentation will be from OPSEU local 364, Denis Perreault. Good afternoon. Welcome to the committee.

**Mr Denis Perreault:** Good afternoon, Mr Chair. Good afternoon, members of the committee. My name is Denis Perreault, and I'm the president of OPSEU local 364, which represents 678 civilian OPSEU members who are currently working for the Ontario Provincial Police headquarters in Orillia. I have requested and appreciate the opportunity to be here today to discuss the implications that Bill 25 will have on OPP civilian employees. While I'm here today addressing this committee, I would like to point out that the Ontario Provincial Police Association is currently holding an association meeting in the auditorium of my work site.

The OPPA has a special relationship with its employer, the Ontario Provincial Police. Under normal circumstances, this relationship is the kind of thing that the Ontario Labour Relations Board might regard as evidence that an organization was too cozy with management. The board might say that this close relationship makes it difficult for the organization to act as an effective employee representative. On that basis, the board might bar the organization from certifying as a bargaining agent.

Unfortunately, the board will never have the opportunity to pass judgment on this issue. If Bill 25 goes through, the association, which is not a union, will be allowed to conduct what amounts to a union organizing drive. Under Bill 25, the labour relations board will be required to act as if the OPPA is in fact a real union, even though it is not. In contrast to the OPPA, OPSEU is restricted and cannot conduct any union business within the facility or on the employer's equipment and time, but the OPPA seems to be able to. Bill 25 provides special status for the OPPA to raid our membership, with few limitations. The employer allows the OPPA to use its

corporate equipment, computers, faxes, telephones and facilities to continue with its propaganda on company time. OPSEU, a legitimate bargaining agent, is denied this right.

OPP civilians like the idea of having a choice, even if they are OPSEU supporters. However, we believe that a choice of this kind is inappropriate when the rules governing the choice are clearly biased in favour of one of the choices. That is what would happen under Bill 25.

As I noted already, Bill 25 will allow the OPPA to launch an organizing drive, even though the OPPA is not a union. That is strange enough. But the OPPA is also being allowed to carve off a piece of an existing bargaining unit. This is not the kind of thing the labour relations board would normally allow. If a union wants to organize a bargaining unit, it normally has to organize the entire thing. In this case, the entire thing would have to be one of the six OPSEU bargaining categories in the Ontario public service. This is not what Bill 25 talks about. The existing public service bargaining categories recognize the fact that people who do the same or similar jobs for the same employer should all be entitled to the same or similar wages and working conditions.

We believe that civilian employees of the Management Board Secretariat have more in common with each other than they do with police officers. The police, as an armed, paramilitary group, are naturally governed under different rules than civilians. Their rights to engage in political activity or to bargain collectively are restricted. We do not think it is sensible that civilian employees should be restricted by rules that were designed specifically to ensure police control over civilians. Another thing that is extremely odd about Bill 25 is that if the OPP civilians decide to join the OPPA, their vote will create the bargaining unit. Normally, the bargaining unit exists before the organizing drive occurs. The reason for this is, how could a union know about a non-existent bargaining unit? Again we see special treatment for the OPPA in Bill 25.

I have read the confidential question-and-answer document about Bill 25 that the government distributed to top managers in the public service. In it, the government says, "We are responding to requests from employees." The government has not shown any evidence that a majority of OPP civilians, or even a large number, is requesting a change in bargaining agents.

In allowing OPP civilians to choose to be represented or not be represented by the OPPA, the government is opening the door to intimidation. Civilian employees of the OPP will be asked to join an organization that represents people with a great deal of authority over them. These people wear uniforms designed to put forward an image of power, control and authority. They also wear guns. Imagine you are a woman who is a civilian secretary being asked by an armed, uniformed man to join his association. How would you feel? The man does not have to pound on your desk, doesn't have to raise his voice in order to make you feel like you are under pressure. Even if the OPPA is not allowed to engage in



unfair labour practices during the organizing drive, the uniform and the gun are intimidating on their own. In these circumstances, it is difficult to speak of people making a free choice.

You can see why many of us are extremely leery of Bill 25. We have much at risk if this bill is passed: our collective agreement, the best pension plan in the country, our right to file grievances and our right to see those grievances go to arbitration. We fear intimidation of our members by members of the OPPA. We fear deception of our members by members of the OPPA. For example, the OPPA is dangling the promise of arbitration in front of our noses, but they are not telling our members that under the existing Public Service Act, the number of issues that an arbitrator could look at is severely restricted.

The standard procedures of union organizing drives in Ontario have been built over decades. They may not be perfect, but they are tried and tested, and they are based on the precedents set by thousands of cases. Bill 25 is a dangerous deviation from the collected wisdom of labour relations law in this province. Maybe this is why it is a biased piece of legislation. The bias is really clear when you consider the fact that if a majority of OPP civilians vote to join the OPPA, Bill 25 will not allow them to ever vote again if they change their minds. So much for democracy. The government is selling Bill 25 to OPP civilians as a door opening. In reality, it is a door that opens once and then it slams shut forever. As far as it concerns the representation rights of my members and of OPSEU members in OPP offices and detachments around Ontario, I encourage you to vote against it. Thank you very much. I would be pleased to answer any questions.

**The Chair:** Thank you. We do have two minutes.

**Mr Kormos:** Thank you very much. Obviously you and Ms Bahm, for instance, disagree. That's fair enough. But I'm particularly interested in what you're saying in here about the employer allowing the association to use its corporate equipment. Help us. We have one more question period before the week is over, and this is something the Solicitor General might be called upon to answer. What are you speaking of there?

1650

**Mr Perreault:** What I'm speaking of is that right at this moment branch 18 of the OPPA is holding an association meeting in the general headquarters of the OPP in Orillia. They also use their equipment to type up their minutes and distribute them to the members of their board. A while back, when I met with the commissioner, the internal global addressing system was being used to distribute OPPA propaganda to our members.

**Mr Kormos:** Sorry, would you repeat that one? What about the addressing system?

**Mr Perreault:** Global addressing system.

**Mr Kormos:** What is that? I don't understand.

**Mr Perreault:** Every member within the justice system has e-mail, because we work with our computers, so that system was used to promote and provide our members with OPPA information.

**Mr Kormos:** Whose property is that system that you're talking about?

**Mr Perreault:** That is the government's system, the Solicitor General's.

**Mr Kormos:** OK. Do you have any idea during what time of day or night this is being utilized?

**Mr Perreault:** It is 24 hours a day, seven days a week. We're a 24-hour agency. It can be done at any time. I can receive e-mails at 3 o'clock or 7 o'clock in the morning.

**Mr Kormos:** You should know, as you may well, that the prospect of arbitration in the province's recent history of the last six years has become, I suspect, far less attractive than it has ever been, because the legislation that's coming down the pipe, in terms of how arbitration is set up as an alternative to collective bargaining, is not the arbitration that you and I remember from our youth or even our middle age. It is pretty scary stuff. It is a far cry from arbitration. You know exactly what I'm talking about, I suspect.

**Mr Perreault:** Yes, I do.

**The Chair:** Thank you for coming before us here today.

#### YOLANDA SUNNERTON

**The Chair:** Our next presentation will be from Yolanda Sunnerton. Good afternoon. Welcome to the committee.

**Ms Yolanda Sunnerton:** Good afternoon. Thank you for having me. Please allow me to introduce myself. My name is Yolanda Sunnerton. I have been employed with the Ontario Provincial Police for 25 years, of which the last 20 have been as a communications operator. Bill 25 is not a new issue to me. In fact, this process has been tried many times in the past. However, it has never been so organized and the support so overwhelming. As communication operators, we work alongside the officers on a shift work basis, dispatching units to occurrences and arranging backup and assistance for our officers, the public and acting as a liaison between municipal forces, fire, ambulance and a multitude of other duties.

There are approximately 400 communication operators working at 10 communication centres across Ontario. We operate the communication centres around the province and are the lifeline to the citizens and the Ontario Provincial Police officers. We are on an every-day basis the first contact for citizens and officers in a crisis situation. We consider ourselves professionals and are an integral part of the policing community. The Ontario Public Service Employees Union currently represents us. We are the only police civilian employees in the province who are not represented by their respective police association.

The current situation we feel is contrary to public interest and that of the communicators and the police officers we work with so closely. For example, we were deemed an essential service during a strike period. For communicators, that meant scarce labour. A third of our



strength was removed by the process of picking names out of a hat, with no regard to experience taken into consideration, a situation which is not conducive to public or officer safety. OPSEU also deducted 30% pay from those employees who were deemed essential to supplement the OPSEU strike fund. I speak for my colleagues when I say I do not want to be put into that situation again. We feel that our voice is lost in the 65,000-member-strong OPSEU. Our views, concerns and our unique role in policing have not been recognized.

This is apparent in our bargaining unit. Presently we are in the institutional health care encompassing nurses, bakers, butchers, canteen operators, childcare workers, psychologists etc, a kind of catch-all group. Prior to this, communications operators were part of the maintenance bargaining unit. We cannot expect our uniqueness to be recognized in a union such as OPSEU, where the mainstream membership is so different from ours. Should the legislation be passed, it would provide us with a welcome opportunity to leave OPSEU and join the Ontario Provincial Police Association to bring us on-line with all other police service communicators.

In closing, I would like to say that communication operators are proud, dedicated and committed to the OPP and the citizens we serve. We feel a strong kindred spirit and unity with the officers. I feel the common issues and concerns we share with the officers would only make logical sense and would be the groundwork to build a solid framework, including all employees of the Ontario Provincial Police. Within the last little while the excitement has been increasing. Co-workers' questions have gone from, "What if?" and "What about?" to "When?" and "What can we do to assist this process?" We look forward to meeting other police communicators at our future association meetings at the provincial and national level. It will allow us to discuss issues which affect our role in policing.

I'd like to thank you for your time, interest and your consideration for this bill. It will give us a democratic opportunity to select who will represent us.

**The Chair:** Thank you very much. This go-round the question will be for the government benches.

**Ms Mushinski:** Thank you for your presentation. A couple of suggestions have been made, particularly by I believe OPSEU representatives, that they haven't received any indication that there is overwhelming support for this particular amendment, Bill 25. However, I notice in your submission that you have clearly indicated that Bill 25 is not a new issue and that in fact the process has been tried many times in the past and has never been so organized and the support so overwhelming as now.

**Ms Sunnerton:** That's right.

**Ms Mushinski:** Can you give me particular data or information supporting that particular statement?

**Ms Sunnerton:** I know there are approximately 2,500 Ontario Provincial Police civilian members. Over 1,000 have written letters for this bill to be enacted.

**Ms Mushinski:** Unfortunately, I was not able to ask the previous speaker about the statement he made with

respect to intimidation. He said, "Imagine if you're a woman who's a civilian secretary being asked by an armed, uniformed man to join his association. How would you feel?" I guess he's assuming that all police officers these days are men, as opposed to women. Could you enlighten me on that, assuming that you deal with female police officers as much as you do male.

**Ms Sunnerton:** Yes, we do. In the 25 years that I have been part of the provincial police I have never once felt intimidated. Most of the officers are good friends of mine. Because we work on a shift-work basis, our days off are together. We all have families and we are all very good friends. I could not for one minute believe that anybody would be intimidated by a police officer working with the provincial police.

**Mr Miller:** I just have one question. The previous speaker said that one of his concerns was that the OPP is too cozy with management. I assume that means that the OPPA has a good relationship with management. Do you think that's correct, first of all? Do you see that as being a problem?

**Ms Sunnerton:** Not at all. I believe that if they have a very good relationship, that would enhance resolving issues.

**Mr Miller:** That would certainly be my feeling as well, having run a small business. I think better relationships are more effective and things work better. I think that makes sense as well.

**The Chair:** Thank you very much. I appreciate your coming before us here today.

1700

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 104

**The Chair:** Our next presentation will be from Alicia Czekierda. Good afternoon. Welcome to the committee. Have I got that correct?

**Ms Alicia Czekierda:** You did that very well.

Good afternoon, Chairman and committee members. My name is Alicia Czekierda and I am a public employee. I work at the Robarts/Amethyst School in London, where I am president of local 104 of the Ontario Public Service Employees Union. There are about 135 people in my local. We work as secretaries, teachers, residential counsellors, speech pathologists, systems officers, maintenance staff, classroom assistants, nurses and in other jobs. Our school provides support to vulnerable children.

As you probably know, Robarts school is a provincial school for the deaf. Amethyst school provides help to children with severe learning disabilities and attention deficit disorder. Our school has a proud history as part of public education in Ontario. As OPSEU chair of the ministry employee relations committee in the Ministry of Education, I am proud to represent more than 1,000 people who form the backbone of public education in this province. I am here before you to present my views on Bill 25.



As a public servant for more than 26 years I feel that this bill is regressive on several points. However, as I only have a few minutes, I would like to limit my remarks to the parts of the bill that deal with the types of jobs that are allowed under the Public Service Act.

Currently under the Public Service Act, employees are either appointed to the public service or not. The former, called classified employees, have what used to be called permanent jobs. Under the OPSEU collective agreement they have a benefit plan, they have a pension plan and they have certain job security protections, such as seniority rights and enhanced severance pay.

The second type of worker is called unclassified. Unclassified employees were originally supposed to be hired for temporary purposes, for example as backfill for people on leave. They were never intended to make up a major part of the public service workforce. As supposedly temporary workers, unclassified employees do not have pensions or job security protection. Through bargaining, OPSEU has been able to win them a modest level of pay in lieu of benefits. We have also bargained with them for the right to be converted to classified status if there is an ongoing need for their work after two years as an unclassified employee.

Unfortunately, this government has been eager to dodge the cost of benefits, pensions, and job security language. They have been hiring as many unclassified employees as possible. As a result, the OPSEU bargaining unit is now made up of almost 25% unclassified employees. Bill 25 has certainly been given the right number. It will have a major impact on that 25%.

Bill 25 does two things to contract workers. First, it makes it possible for the government to hire new unclassified workers for contracts of up to three years. Second, it creates a new type of position called a term classified. As far as we can tell, a term classified is kind of halfway between an unclassified and a classified job. Depending on the outcome of negotiations, and if Bill 25 passes as is, these new positions seem to be designed to have some kind of benefits but no pensions or job security language.

The government has told us that these legislative changes involved in this act will allow them to make more attractive job offers to new workers who have the specialized skills the public service needs. At one point in my local, almost all of us were classified employees. We are now up to 45% of the staff being either seasonal or unclassified. This situation has come about because every time a vacancy occurs, my employer destroys a classified job and replaces it with a contract job.

The government has stated that in drafting Bill 25, they consulted with top bureaucrats in the various ministries. If they had ever taken the time to talk with unclassified workers currently working for the government or those who have left, they never would have introduced these changes.

I will tell you what my unclassified members are telling me. They are telling me that working for the government is just a stepping stone. They are putting in job applications everywhere they can find. They are

trying to spend as little time in government as possible. One member, a young computer professional, exactly the kind of person the government is looking for, told me he was just working to gain experience. "I want out," he said. "I want a place where I can get a pension. This roaming from one city to another is too hard on me and it's too hard on my family."

My unclassified members know that the chance of getting a stable job with the possibility of promotion is minimal or nil in the public service. That is what is causing the government's employee retention problem. Bill 25 will not help attract talented new people to the public service. If you have a bad job, it is not an improvement to be told that you will be guaranteed that bad job for three years instead of one.

Obviously, benefits are a good thing. But benefits alone will not make anybody choose the public service over another job. In every sector of our economy we have seen the same thing: what attracts people is a good job. It is no mystery why so many of our Ontario-trained nurses are nursing in Texas. They are down there because that is where they can get full-time jobs with benefits, pensions and some kind of job security. The same is true in the public service. Ontarians will want to work there if, and only if, it becomes a place with jobs that allow them to buy a house, raise a family and go on vacation once in a while.

Bill 25 will not do this. Bill 25 only allows for greater use and abuse of contract personnel. Many staff who are now employed, who have the knowledge and expertise needed, are leaving the public service. We are no longer able to attract the next generation of skilled workers to government service. The commitment of employees to their employer is exactly the same as the commitment of employers to their employees.

Bill 25 tells me that my employer, this government, has no commitment to the work we do as public servants. I have served Ontarians for 26 years. In all that time I have never seen staff morale so low. When I started working, public service was a career and a commitment, a commitment that went both ways. That is no longer the case. More and more, talented people want out.

Now, you may say that Bill 25 merely creates options for the government. You may say that the changes in bargaining are subject to collective bargaining, and that is true. But if Bill 25 is really about creating options, why doesn't it create any positive options for employees?

Right now, many public employees' jobs are so precarious that they are afraid to speak out if they see taxpayers' money wasted or if they see dangerous decisions by their employers, such as the ones that led to the Walkerton disaster. Why not change the Public Service Act to give employees a controlled, legal process to blow the whistle on government wrongdoing? Why not change the Public Service Act to make the public service a better place to work? Why not change the Public Service Act to make working for the public service a job with a future?

For these reasons, I urge the committee to amend this bill, if it's not to be withdrawn.



Thank you for your time. Do we have time for questions?

**The Chair:** Actually, I let you go a little bit over, Ms Czekierda. The advantage of presenting a written brief to us is that I knew when you were approaching the end. Thank you very much for taking the time to come before us today.

1710

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION

**The Chair:** Our next presentation will be from OPSEU, Ms Leah Casselman and Mr Timothy Hadwen.

**Ms Leah Casselman:** Thank you, Mr Chair. I understand there's a spot at the end of the day, and we have requested that my colleague be allowed that spot, if at all possible.

**The Chair:** Your understanding should be that as it stands right now we are running 22 minutes late. There may be part of a spot, depending on whether every group between now and the end stays on—

**Ms Casselman:** If there is, he'll snag it, if that's acceptable.

**The Chair:** That's acceptable.

**Mr Kormos:** I'm prepared to sit here to accommodate all of the presenters. I would ask that the Chair disregard the clock.

**The Chair:** This would be an additional presenter to what's already on your list, Mr Kormos. We will certainly hear everyone that is on there. I'm prepared if there's—

**Ms Casselman:** We understand you were late arriving because of responsibilities in the House.

You boys aren't packing, are you, so I can sit here?

Good afternoon. My name is Leah Casselman and I'm the president of the Ontario Public Service Employees Union. My union represents 95,000 Ontario public employees, including over 45,000 direct government employees of the Ontario public service. You can tell by our name that the members of OPSEU have a unique interest in the Public Service Act, and I'm happy to be here today to talk to you about Bill 25.

I want to start by thanking those members of the opposition parties who were instrumental in forcing these hearings. To the government members on the committee, I only say I leave it to you to decide how embarrassed you should be to be part of a government that only accords two and a half hours of public discussion to such an important bill. Bill 25 concerns the future of a public institution that directs the spending of \$64 billion worth of taxpayers' money every year. At another time in this province a bill of this sort would have been the subject of weeks of hearings. At another time this committee would have actively solicited input from academics, public employees and the general public. That would be novel. At another time the discussion of changes to the Public Service Act might have been very close to a non-partisan discussion. Not today.

It is because of this government's profound disrespect for the Ontario public service that a small handful of us are here today for a token 10-minute presentation, as if any of this could be dealt with within 10 minutes. Nonetheless I make the following remarks.

I have entertained reading the confidential question-and-answer document put out by the government to explain Bill 25 to the top managers. In that official spin document, the government says it is changing the rules around union representation around civilian employees of the Ontario Provincial Police because the employees have requested the change. If this is true, it should have been front-page news. It is the first time that I have heard of this government voluntarily listening to any of our members. Usually it takes the pressure of collective bargaining or a public inquiry to get them to listen. It is truly a miracle.

We shall see in the next week if the government is actually listening to these hearings, because if Bill 25 passes through the Legislature without changes, then we will know once and for all that these hearings have been strictly a pro forma exercise. I call on the members of this committee to make substantial changes to this bill or, better yet, to scrap it altogether. I think one reason this bill has received less attention than it deserves is that the public service is a bit of an abstract concept. It deals with abstract ideas, ideas like professionalism, accountability, impartiality. But these are not merely ideas. They have been at the centre of several top news stories over the last six years.

Maybe you'll recognize them: Ipperwash; the clubbing of OPSEU strikers by the OPP in front of the Whitney Block on March 18, 1996; the mass downsizing of the Ontario public service; and, of course, Walkerton. With the shooting of Dudley George at Ipperwash, the issue is this: did the OPP, who are public employees, act on their own professional judgment, or did the Premier and his government interfere with the independent operation of the police and turn them into a political arm of the political policies of a political party?

The issue was the same at the Whitney Block. Did the OPP act independently to secure peace, order and good government for all, or did it act to further the political agenda of one political party? Did the mass downsizing of the public service undermine the professionalism of public employees by stripping them of the resources they needed to do their jobs? Did the downsizing create a climate of fear, as the Provincial Auditor said, that prevented public employees from speaking out about disasters waiting to happen? Did the downsizing and the associated privatization and deregulation cut long-established accountability relationships? If so, did this contribute to the Walkerton tragedy and scores of non-fatal public service disasters? These are public service issues.

The workings of public services around the world have been studied and improved through millions of hours of debate and centuries of practice. As outlined in more detail in our discussion paper, the world knows the



principles of good public service. These principles are professionalism, independence and accountability.

Professionalism means public employees have both the skill and the commitment to tell the truth to government, even when the truth is not what their political masters want to hear. Independence means impartiality. It means a commitment to serve the public interest, not merely the agenda of any one governing party. Accountability means a clear chain of command that makes it crystal clear who is responsible for what decision. It makes it clear how that chain links non-partisan public employees to democratically elected ministers of the crown. When you are doing your one-day clause-by-clause analysis, these are the issues you should be thinking about.

As your study Bill 25, ask yourself, please, does the creation of more job insecurity of public employees, which is what Bill 25 allows, increase or decrease their ability to act independently from partisan political interference? Does it increase or decrease their professional commitment to public service? What does it do to morale?

In the same vein, does giving human resource managers unfettered access to employees' personnel files improve employees' feelings of personal security? Again, what does it do to their morale?

Does moving civilian employees out of a civilian bargaining unit into a police association increase or decrease those employees' ability to speak out about abuse of power by the police, or is Bill 25 merely a straight-up political payoff to the Tory party's OPP attack dogs, a payoff for formally backing their Tory candidate, Tom Long, in his leadership bid for the Reform-Alliance party? It does move us one step closer to a police state.

Does giving private operators the right to direct public employees clarify the chain of command or does it obscure it by making those operators accountable in two conflicting directions: to the taxpayers' on the one hand and to their shareholders on the other? Does giving unelected public service managers and private operators the right to set certain workplace rules for public employees increase or decrease the democratic accountability of cabinet?

Remember that after Walkerton, when this government was under intense political scrutiny and said it wanted to increase the accountability of the Ministry of the Environment, it turned the Ontario drinking water guidelines into regulations. Bill 25 does the opposite. Why is this?

I believe that when you study those questions honestly you will see that in every way Bill 25 leads us away from professionalism, independence and accountability. It leads us to blurred responsibility, it leads us to a politicization of public service, it leads us to increased secrecy and less transparency and, last, it leads us to corruption.

History is watching you. Public administrators a century from now will study what you do in the next week. They will know your names. They will know if

you helped build on the proud tradition of the Ontario public service, and they will know if you contributed to its decay.

I urge you to blow the whistle on Bill 25. You should reject its ridiculous and dangerous changes. You should demand that the government make the Public Service Act whole by doing the one thing that is left undone. You know what that is? You must know what that is. That's to proclaim the whistle-blowing portion of the act. That's the one thing that you can do that will really make the public service more professional, more accountable and more independent from partisan tampering.

Now, I'd be happy to engage in about 30 seconds of very democratic debate.

1720

**The Chair:** Thank you very much. I believe the last time we left off it was the Liberals, so it would be Mr Kormos. Oh, sorry, Mr Kormos, I stand corrected. Mrs Mushynski was the last questioner, so it would be Mr Levac.

**Mr Kormos:** I would have wanted the government to have my turn.

**Mr Levac:** Thank you, Leah, for your presentation. Knowing some of your background, can you comment for me on your concerns, which I know you have voiced before, on the possible privatization issue that Bill 25 seems to be leading us toward insofar as the pillars that you were talking about that the public sector offers in terms of accountability and all of those mentioned in your deputation.

**Ms Casselman:** I think I'd immediately refer you to the Minister of Community and Social Services and ask him how those negotiations went with Andersen Consulting. The Legislature was outraged at how much public money was going into the pockets of Andersen Consulting, so they sent them back to negotiate and he's given them even more. Those are the kinds of things that taxpayers, I think, should be upset about.

When you introduce the private model into delivering service, the shareholders of those companies are more interested in how much money they can get out of it, as opposed to what kind of service is being provided. I know the Premier himself says he's not government; he's here to fix it. Guess what, folks? You are government. It's coming right back at you and you do have a responsibility to the citizens to ensure that there is a quality public service—non-partisan public service—delivered across the province.

**Mr Levac:** How much time do we have?

**The Chair:** About 30 seconds.

**Mr Levac:** Thirty seconds. I am interested in your concern about the whistle-blowing legislation and I really think it's necessary to give you an opportunity to comment on how important it is now to have—I think you're expressing deep concern about Bill 25 if it gets enacted, the relationship between that and the whistle-blowing legislation. Can you tie those two together for me?



**Ms Casselman:** Yes. There's an opportunity for this government, in the Public Service Act, to add whistle-blowing legislation—to proclaim it. It's actually there already. They did that as a result of the Walkerton inquiry. Our members who are testifying there have immunity to speak the truth.

The government apparently has said since then that it's too cumbersome to enact, yet they were able to do it for Walkerton so I think it's not that cumbersome at all. It's just that they don't want people who work for them to be able to talk and identify for the public that there are serious problems in the lack of delivery of services.

**The Chair:** Thank you, Mr Levac. Thank you, Ms Casselman, for coming before us this afternoon.

#### MARG SIMMONS

**The Chair:** Our next presentation—actually, you can correct your agenda. Ms Noad has indicated she'd like to be joined at the table by Marg Simmons. So if Sandra Noad and Marg Simmons would come forward, please. Good afternoon. Welcome to the committee.

**Ms Marg Simmons:** Good afternoon, Mr Chairman, and good afternoon committee members. I am Marg Simmons. Sandra was unable to be here today.

**The Chair:** Oh, my apologies.

**Ms Simmons:** Let me begin by telling you that I am a social worker for the government of Ontario. I am also the chairperson of our negotiating team. You may know that the collective agreement we currently have with the government of the day—which in this case is the Conservative government, although we certainly have been proud to be employees when the Liberals were in government, as well as when the NDP were in government—expires at the end of the year.

In the last round we did something called essential services and I learned so much about the Ontario public service. I learned that we work in psychiatric hospitals, we work in jails, we work as health and safety inspectors in workplaces throughout the province. We are communication operators, both in terms of dispatching police and in terms of dispatching ambulances. We're in OHIP offices, we're in courthouses and I guess, when I think about it, most of us probably have friends or relatives or neighbours who receive public services delivered by Ontario public servants. So it's been important for me that both professionalism and pride have been such a part of the presentations this afternoon and it reminds me that Ontario public servants sign an oath. I remember signing my oath on September 5, 1989. I assure you that there is still an awful lot of both pride and professionalism when I say that to you.

It has struck me recently, however, as I kind of take off my social work hat and put on my chairperson of negotiations hat, that there has been or is an attempt—let me put it this way. It sounds like a funny thing happened on the way to the negotiating table. Bill 25 introduces a notion: “term classified.” As you heard earlier, you are either unclassified or classified in the Ontario public

service. “Term classified” says you're a third category now, you're kind of classified. It's my belief that a new notion describing an employee should be discussed at the bargaining table, should be discussed as part of negotiations.

I watched with real interest several weeks ago when this particular piece of legislation was being debated in the House. I remember an F-word being used repeatedly and that F-word was “flexibility.”

**Mr Kormos:** I'm sorry, I'm sure that Mr Harris hadn't been in the debate.

**Ms Simmons:** The F-word was “flexibility.” That's concerning and I'm telling you it's concerning because as a person who sat in the last round of negotiations, the word “flexibility” was also the word most often used by the employer, the government of that day and the government of today, at the negotiating table. Thus I introduce the idea of negotiation through legislation and why it's concerning. Matters are being dealt with by legislation that properly should be brought to the negotiation table.

In the last round of negotiations I actually was in charge of essential services for what you've heard referred to as the institutional health category team. As I noted, we did have two communications operators on that team out of seven people. One was a dispatcher of the OPP and one was a dispatcher of ambulances. I assure you that the essential services agreements and the discussions surrounding communications operators was quite rich with that number of representatives on the negotiating team.

Our employer has already said in the media, starting in January, there will be a cap on any wage increase we see at the negotiating table and there will be further cuts to the Ontario public service. Those announcements were made by Mr Harris and Mr Eves. Bill 25 appears to be yet another attempt to alter the public service away from the negotiating table to address issues properly brought to a negotiating table.

Humbly, respectfully, with the pride and the professionalism of the public service, I ask you not to support this piece of legislation.

**The Chair:** That affords us about three minutes for questions.

**Mr Kormos:** In response to your exhortation, I tell you we won't. That's why I want the Conservatives to have my time to ask you questions. I think this is going to be a far more valuable exercise for them than it would be for me.

**Mr Wayne Wettlaufer (Kitchener Centre):** I thank Mr Kormos for allowing us to have his time.

Ms Simmons, you seem like a very reasonable person and I'd like to try to convince you that the introduction of “term classified” employees as part of the bill is as a result of changing times, more specifically in the last 11 years than there have been at any time in our history, and the necessity that the civil service bring in from time to time job-specific people for a limited period of time because of a specific area of expertise that an individual may have. This is for the ability of a government to



supply service to the taxpayers of the province. I'm sure even you would agree that we should not be taking on full-time employees for a permanent position when all that may be required is a term-specific or job-specific position.

That being said, I'd like to draw your attention to other presentations today and get your views.

1730

**Mr Kormos:** Do you want to answer?

**Ms Simmons:** Oh, am I allowed to answer?

**Mr Wettlaufer:** You can answer, sure.

**Mr Kormos:** Of course you are. You definitely are.

**Mr Wettlaufer:** I'll let her answer that.

**Ms Simmons:** Sorry, I wasn't aware of that—

**Mr Wettlaufer:** But I do have a couple of other questions that I'd like to ask first.

I come from a family, many of whose members have been have been union members over the years. That includes my wife, who has just recently retired from an Ontario government position. She was a member of CUPE.

**Mr Kormos:** If you don't start answering, he'll use up all the time and you won't be able to answer.

**Ms Simmons:** Really?

*Interjections.*

**Ms Simmons:** I'm a social worker. That's not fair.

**Mr Wettlaufer:** I think it's my time. I would like to ask you a question, but I'm having trouble getting through, even though Mr Kormos said that I could have his time.

Do you believe that all employees should have what is a basic, fundamental right, I think, the freedom to associate?

**Ms Simmons:** I think all employees, all people, because we talk about safe groups and all sorts of groups in life—it's important, the notion of freedom of association. It's easy today to talk about unions as an association. Whether we talk about faith, whether we talk about all sorts of freedoms that we have, it's very important. Freedom is important, and choice, and knowing choice within freedom, as far as I am concerned, is also important. I learned years ago as an addictions counsellor that people don't always know what they need.

You can say to someone, "I'll give you what you need. Tell me what you need." People aren't always able to articulate that. The freedom, with the knowledge of the choices that are available, is so important.

**Mr Wettlaufer:** In other words, then, you would not deny the OPP civilian employees to associate with the OPPA. Or if you would deny them that right, would you deny the right of people who do not know the issues in an election to vote in an election?

**Ms Simmons:** The basis of what I said and what I will say again is freedom and choices. People need to have choices and information and freedom.

**The Chair:** Thank you, Ms Simmons, I appreciate your coming before us here today.

## TERRY DOWNEY

**The Chair:** Our next presentation will be from Terry Downey. Good afternoon, welcome to the committee.

**Ms Terry Downey:** Thank you. Good afternoon, my name is Terry Downey and I work for the Ontario public service as a human rights officer and I'm also the regional vice-president for the Toronto OPSEU members.

I've come here today to tell you that I believe the proposed changes to the Public Service Act are wrong and bad for the people of Ontario and the Ontario public service workers who deliver quality public services. There are several concerns I have about Bill 25; however, I will address two key issues that I believe are most troubling.

You have indicated that the proposed changes will allow for increased flexibility in human resources management that will assist managers in optimizing service delivery. Well, creating a new category of "term classified" employee with restricted rights will not provide the public with the high-quality and accountable service delivery that is provided now by classified employees with full rights.

Both the public and the workers who deliver public services want stability in service delivery. Workers who have restrictions and no stable job security, like current unclassified employees, feel disrespected and distressed about their livelihoods and usually leave the public service because they want more stability, unless they find a classified position in the Ontario public service. Therefore, those skills and expertise that those employees have had while they're here are gone from the government for good.

In the Ontario public service, many workers are responsible for confidential and sensitive information about the public. I know I am. Term classified employees with little or no stability have shown they cannot for economic reasons continue to be committed to delivering public services, and therefore I have real concerns about your Bill 25. It will negatively compromise the protection of information that Ontario public service employees gather about the public.

Classified employees, regardless of what service they provide, know their jobs, know how to get the work done and have respect for the services we deliver, and we remain accountable and committed as public servants.

I know from experience, because I was unclassified for two miserable years. Now, as a classified employee for the past 11 years, I remain committed and dedicated to the service I deliver as a human rights investigator in this province. The work I perform is highly confidential, sensitive and important work for the people of Ontario. The expertise required for this service would be severely compromised by frequent use of term classified employees with no permanent job security.

Another distressing concern I have about Bill 25 is the free access by undetermined human resources or other unidentified individuals to employees' personal information and, specifically, medical information through your



WIN access program. To allow any individual access to an employee's medical information without consent is discriminatory and a violation of the Ontario Human Rights Code. The code, as you know, has privacy over all other legislation, and this government should not be breaking its own laws.

I urge this government to withdraw Bill 25 and ensure that the integrity of the public service delivery in Ontario is provided by skilled, accountable classified employees. Should you choose not to withdraw this flawed bill and to ignore the concerns that I and others have brought here today, I would encourage you to implement the proposed changes that have been submitted I believe from corporate OPSEU, specifically the privacy safeguards in this bill to ensure that personal, especially medical, information regarding OPS employees is kept confidential.

I thank you for your time. That's my submission.

**The Chair:** Thank you very much. That affords us about three minutes for questions. At this time we can start with the government. Anyone have any questions?

**Ms Mushinski:** I have one question. I'm interested, Ms Downey, in your concerns over the access to WIN records. Can you tell me how the current system to protect privacy will change under this bill?

**Ms Downey:** Under this bill, and I understand although the bill hasn't been proclaimed, it's already started to change. With the WIN program being introduced in many ministries, of employees who are seeking other jobs outside their ministry, potential employers have access to their personal and medical information that's on that system that they have to put there through the WIN program. Therefore, they are able to see information about their medical history before they've even offered them a job. That's discriminatory, and that's how it's being used. That's unlawful and that should be fixed, because there's nothing in the legislation that I've seen that protects that.

1740

**Ms Mushinski:** It's my understanding that medical information is not kept in WIN.

**Ms Downey:** I can tell you that it is. I can tell you from a personal conversation with a colleague at the Human Rights Commission who's taking a secondment and actually helped me get on the WIN system last week. She told me that when the employer called her to tell her she was offering her the job, she told her she had already been able to access her information on the WIN system and did see her medical history.

**Ms Mushinski:** But it's my understanding that access to information depends on the operator class assigned and it's secured by an encryption and access code system. You're saying that doesn't apply to—

**Ms Downey:** I'm telling you that it's not.

**Ms Mushinski:** Would you be willing to give us specific cases of where that's being breached?

**Ms Downey:** I just told you of a specific case in my office where it's happened.

**Ms Mushinski:** But would you be willing to take that to the appropriate management to have it investigated?

**Ms Downey:** I certainly will be dealing with it at our MERC. However, where the legislation is right now and the way the system is in place right now, there's nothing stopping that. That's what you need to fix, our whistle-blowing protection, because I certainly will be taking it to my ministry employee relations committee, MERC, on June 26 when I meet with the Ministry of Citizenship management.

**Ms Mushinski:** I thought I heard from Ms Casselman that that was one aspect of the bill she would actually like to see enacted.

**Ms Downey:** Yes, I would like to see it enacted as well, whistle-blowing legislation, because that shouldn't be happening. But you need to be able to make sure the medical information is secure and that employees know they can be reporting it, and that managers specifically know they shouldn't be looking at it and shouldn't have access to it. You have lots of technical experts who could probably block that for you, but I don't see that in the legislation, to ensure that that integrity is carried out.

**The Chair:** Thank you very much, Ms Downey, for coming before us here today.

#### DOUG PEEBLES

**The Chair:** Our next presentation will be from Mr Doug Peebles. Good afternoon and welcome to the committee.

**Mr Doug Peebles:** Good afternoon, Mr Chairman, Madam Clerk, committee members of all parties. This is my first time here. It's kind of interesting seeing this process. Maybe I should run for office some day.

**The Chair:** I encourage it.

**Mr Peebles:** You encourage it?

**The Chair:** The more, the merrier.

**Mr Peebles:** I'd like to thank the committee members for inviting me to come here to speak on and discuss briefly Bill 25.

I am a classified systems officer with 17 years' service in the Ontario public service, five of those years spent working directly with the food industry division and the food inspection branch under the Ministry of Agriculture, Food and Rural Affairs. As the OPSEU chair of the ministry employee relations committee, MERC, for OMAFRA, I represent over 300 bargaining unit staff, providing such front-line services to Ontario as food inspection, in particular fruit and vegetable, dairy and, more particularly, what I'm going to address my comments to, meat inspection.

You've heard from a number of other front-line staff about the range of tremendous difficulties, should Bill 25 pass into law. With my experience I want to speak specifically to you about the very serious implications of Bill 25 regarding temporary classified staff. I want to illustrate for you in the area of public safety, and particularly meat inspection, how the bill will do just the opposite of what the sponsors say it is designed to do.

I've read that Bill 25 is supposed to promote an efficient, expert public service. I understand the reason-



ing is that skilled workers and modern governments, as was mentioned earlier, are looking for short-term contracts, private sector consultant-type opportunities to enhance services. Nothing could be further from the truth when it comes to the public service work that's necessary to ensure that Ontarians are eating safe meat and fruits and vegetables. Think of those imported fruits and vegetables that come in.

In my ministry, meat inspectors and other related staff provide for inspection of animals, meat and facilities at approximately 250 provincially licensed abattoirs under the authority of the Meat Inspection Act. Prior to 1996, approximately 150 full-time classified inspectors criss-crossed Ontario, working with licensed abattoirs, producers, the food terminal and retailers to ensure compliance with the Meat Inspection Act and the Farm Products Grades and Sales Act. What with foot and mouth disease in the international news, Ontarians, in particular consumers, know the importance of an effective, stable food inspection system staffed by full-time classified employees.

Taking a look back at history, what happened? In mid-1996 came the first wave of layoffs of inspectors. All the fruit and vegetable full-time classified inspectors—gonzo—gone; approximately half the full-time classified meat inspectors, with upwards of 15 years' service, gone. In 1997, the next wave of layoffs—almost all of the rest of full-time classified meat inspectors, with 15 to 30 years' service, gone. You ask yourself, how are meat inspection services delivered since the layoff of full-time classified staff? Well, that's a really good question.

It's delivered through a so-called alternate service delivery plan, which when translated means that approximately 130 staff with no benefits, no security, no guarantee of hours and fewer rights come to mind. How are employees working with these types of working conditions expected to have a sense of being able to provide for their families? Instead of receiving a regular paycheque, they submit time sheets which are treated like contractor invoices, which may or may not be paid on time. We've had examples in the past where something went wrong with the financial system and contract inspectors would be calling, looking for their cheques. They were out of money and they couldn't put groceries on the table until they were paid. Who in their right mind would want to work in these types of working conditions? Most of the experienced meat inspectors who were laid off back in 1996 and 1997 gave it a try. They tried working under the alternate service delivery plan and asked themselves the very same question. They've since moved on to other opportunities.

Today just eight—you can count them on two hands—of well over 130 critical staff who keep meat safe are classified full-time staff with some measure of job protection, a reasonable wage and decent benefits. In a recent MERC meeting we, Ontario Public Service Employees Union, asked ministry management about the alternate service delivery plan and the high rate of meat inspector turnover. They indicated it was a serious prob-

lem for them and would get back to us on that. In other words, the supply of safe meat to your families is contingent on this temporary, inexperienced, revolving-door-type workforce.

In the past five to six years we have repeatedly cautioned the employer about the revolving door, the gaps in service, the likelihood of public health being threatened due to the lack of experienced, full-time classified staff. Unfortunately, we've seen some of the devastating results that can occur, as it did one year ago in Walkerton.

Already 25% of the now depleted public service is made up of temp employees. If passed, Bill 25 will enshrine a dangerously short-sighted model of public service employment. How many other public safety, justice or health care programs will be dangerously compromised as provisions for a just-in-time public service are enacted?

For these reasons I urge the committee to amend this bill, if it's not to be withdrawn, and I understand some amendments have been forthcoming. You need to provide the public with the service and protection it deserves. Provide it with a professional public service made up of full-time public servants.

In closing, Ontario needs a public service that has stable, experienced classified staff working in the areas that mean the most to public safety; as well, meaning the most to the employees working in those areas so that they're able to make a reasonable living, with benefits to provide for their families; and they, in turn, will contribute to their community and the economy of this province. Thank you.

**The Chair:** That leaves us just over three minutes for questioning. This time it will be the Liberals.

**Mrs Bountrogianni:** Thank you, Mr Peebles. I do encourage you to come into politics. We need good people in politics.

Before I went into politics, I was the chief psychologist for our local school board and worked with social workers and speech-language pathologists. What allowed me to be brave and look out for the best interests of my clients, who were the students, the kids and the families, was the fact that I knew I couldn't be fired easily, the fact that I didn't have a term contract.

1750

That was very important for me because I have two children, a mortgage, a car loan. I'm human and I had to have that security, so I understand exactly what you're saying. My husband is a professor. He spoke out many times against his university because he had tenure. I've got Walkerton in mind the whole time Bill 25 is being discussed. I'd like you to comment more on how, particularly with inspectors of fruits and vegetables—and I apologize for my ignorance here. I didn't know that this many inspectors of fruit and vegetables were laid off. Were they just laid off?

**Mr Peebles:** Gone.

**Mrs Bountrogianni:** That scares me as a parent, feeding vegetables to my kids, not knowing if they've



been properly inspected. Please talk about the implications of not having that security, with respect to inspecting foods, to the safety and the health of the citizens of Ontario.

**Mr Peebles:** In the absence of anything, experience plays a big role in knowing. I think we've seen this in the past, a year ago. You need to have that experience there to know what's going on. If you have a continuous revolving door of short-term employees because they are looking for something better, they are going to be encouraged to look for other things, and they need to because they have to provide for their families. But if you take that away and give them something decent so they can sit there and focus on what they're doing, they are going to be good employees to have there. You need that experience to be there. When you throw employees with 15 or more years' experience out the door, that's throwing out a lot of experience.

**Mrs Bountrogianni:** To the members of the government, that's common sense in my book.

**The Chair:** Thank you very much for coming before us here today.

#### MARK KOTANEN

**The Chair:** We have a vote in eight minutes. We have a choice. We have the next presenter before us. That would take us beyond our normal sitting time. I would leave it up to that presenter. We could probably do four minutes and then return after the vote. If the presenter, Mr Kotanen, would like to come forward, I think what we are going to have to do in the circumstances is—if we can restrict your comments to perhaps four minutes.

**Mr Mark Kotanen:** I think it will be impossible.

**The Chair:** Then it may become zero. That's the option you have. I'll leave it up to you. Members of the committee cannot come back after six o'clock. The rules of the House are that I can ignore the clock if I'm already sitting here—tough to use that argument if I'm pulled out to vote in the Legislature.

**Mr Kotanen:** My presentation is short. I believe I can do it in four minutes.

**The Chair:** Excellent.

**Mr Kotanen:** My name is Mark Kotanen. I believe the negative impact of Bill 25 and its effect on my community of Sarnia and my workplace warrants my long trip to Toronto to make this presentation. I want to thank the committee for this opportunity, which I got at 9 this morning. I am making my presentation as a concerned private citizen. I am especially concerned about how Bill 25 affects the role of our government as a guardian for our communities and as a model for employers. For the record, I am a provincial civil servant and an active member of my union, OPSEU. In my community of Sarnia, I have in the recent past entered into the political arena as a candidate.

As I speak with people in my community, a common concern is apparent. They want good jobs and the ability to look after their families, and in time they want good

jobs for their children too. These people decry the trend toward contract or part-time work without pensions or proper benefits, and wages which could not support families, let alone allow a working person to purchase a home or educate their children. The citizens of my community are looking for a government which responds to their concerns and which ensures good, full-time employment through legislative initiatives and program development.

This brings me to my point on the nature of government and its responsibilities to working families. Just as people in my community are looking for government to address these concerns, the role of government in terms of the workplace should not only be legislative but should also be a role model for private sector employees. The people in my community would benefit from a provincial government which ensures its employees have good, decent-paying, full-time jobs. Bill 25 precludes the provincial government from assuming the role of a model for employers in this province and, in doing so, harms people in my community. The people of Sarnia deserve the quality of public services my co-workers provide.

In my professional life I'm a correctional officer. I and my co-workers are an integral part of the public safety apparatus, along with fire services and policing, that provides quality protective services to my community. The employees at Sarnia Jail have an enviable record of providing quality services with an extremely low number of credible incidents and an excellent security and custodial record. The key to this performance record is the quality of the professional correctional officers the Sarnia Jail has been able to attract and retain. They are career officers. They are committed. Until recently, these women and men have not been distracted by the threat of job loss or precarious employment. That is the way it should be.

Bill 25 will be the weight that will break our ability to continue to provide the quality public services that people of Sarnia know and deserve. Let me explain why. Correctional institutions function on the quality of the people who work in them. Consistency and stability are the keys. Bill 25 will end that stability. As the government increases the number of part-time and contract staff, retaining staff will be hard.

These staff will leave to look for good jobs. Our jails are safe when stability is achieved and maintained. Bill 25 will end that. Quality will suffer and safety will suffer.

Bill 25 also allows expanded access to the workplace information network system, which will allow unknown numbers of people to access correctional officers' personal information, including private operators. For us, this is dangerous. For the employer, it is reckless. As reported in the Toronto Star, criminal groups are collecting files on law enforcement officials, including corrections officers. Why risk making criminal life easier when the price of its victims is so high and the whole plan unnecessary? The system we have is not broken. Our personal information should be in the hands of a small number of accountable public servants. Period.



To finish up, ultimately a bill which presents itself as a management tool is really about our communities. It is about good jobs, safe jails and safe communities, and it is about the government choosing to lead the way as an employer, as a public guardian and as a leader with a vision for strong local economies and healthy communities. Bill 25 should die on the floor.

Thank you very much for your time.

**The Chair:** Thank you, Mr Kotanen. I appreciate your indulgence.

The committee will stand adjourned until Monday at 3:30, and a reminder that amendments are due by 5 o'clock this Friday.

*The committee adjourned at 1758.*



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## STANDING COMMITTEE ON GENERAL GOVERNMENT

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Mr Peter Kormos (Niagara Centre / -Centre ND)

Mr Joseph N. Tascona (Barrie-Simcoe-Bradford PC)

### Also taking part / Autres participants et participantes

Mr Bruce Crozier (Essex L)

Mr Wayne Wettlaufer (Kitchener Centre / -Centre PC)

### Clerk / Greffière

Ms Anne Stokes





ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 18 June 2001

# Journal des débats (Hansard)

Lundi 18 juin 2001

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Public Service Statute Law  
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des lois en ce qui a trait  
à la fonction publique

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le Code de la route  
(passagers à l'extérieur  
d'un véhicule)

Chair: Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Monday 18 June 2001

*The committee met at 1540 in committee room 1.*PUBLIC SERVICE STATUTE LAW  
AMENDMENT ACT, 2001LOI DE 2001 MODIFIANT DES LOIS  
EN CE QUI A TRAIT  
À LA FONCTION PUBLIQUE

Consideration of Bill 25, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act, 1993 / Projet de loi 25, Loi modifiant la Loi sur la fonction publique et la Loi de 1993 sur la négociation collective des employés de la Couronne.

**The Chair (Mr Steve Gilchrist):** Good afternoon. I'll call the committee to order. The first order of business today will be to do clause-by-clause consideration of Bill 25, An Act to amend the Public Service Act and the Crown Employees Collective Bargaining Act, 1993.

**Mr Peter Kormos (Niagara Centre):** On a point of order, Chair: I am seeking unanimous consent to move what is motion number 18 in your package out of order in an amended form.

**The Chair:** Do you have a copy of the amended form? I'm sorry, Mr Kormos, do you wish to introduce—  
*Interjection.*

**The Chair:** My question is, are you asking that we change number 18 when we get to it?

**Mr Kormos:** No, sir. I'm asking for unanimous consent to move it now, not in order, and amended so that it reads as is, plus the words "from a qualified medical practitioner." So that it reads: "Section 34 of this act does not authorize the use of personal information that is medical information from a qualified medical practitioner."

**The Chair:** Is there unanimous agreement that we consider this motion now? It is agreed.

**Mr Kormos:** I move that section 34 of the Public Service Act, as set out in section 15 of the bill, be amended by adding the following subsection:

"Medical information excluded

"(9) Section 34 of this act does not authorize the use of personal information that is medical information from a qualified medical practitioner."

**The Chair:** Further debate?

**Mr Kormos:** Please, very quickly, the concern was about the nature of the information that was going to be shared across the board pursuant to the amendment in the

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Lundi 18 juin 2001

government bill. We would have preferred that medical information of all types be excluded from that, medical information that's shared across the board; however, we are prepared, as we have, to amend this to identify that "medical information from a qualified medical practitioner" not be among those things that are shared across the board.

**Mr Dave Levac (Brant):** I have a question of clarification to the parliamentary assistant. When we say "from a qualified medical practitioner," is there an assumption that there are medical records in people's files that are not from a practising medical officer of some sort?

**Mr Wayne Wettlaufer (Kitchener Centre):** No, not medical information insofar as that is concerned, Mr Levac. But there could be statistical information, ie, sick days, which might be related. We need records of sick days from an administrative standpoint.

**Mr Levac:** If that were issued by a medical officer, for instance, an excuse or a reason why they were absent, would that be removed?

**Mr Wettlaufer:** The statistic itself would not be removed, but the reasons would never enter into that file.

**Mr Levac:** Very good. So it was more a reason for any of the files needed for the statistics the government wishes to hold. What the NDP is asking is that, as long as it's medical information, have it removed, with the amended formula of "from a qualified medical practitioner."

**Mr Wettlaufer:** That's correct.

**The Chair:** Is there any further debate? Perhaps, Mr Kormos, I'll get you to move an amendment to the amendment first. We'll vote on that and then we'll vote on the amendment as amended.

**Mr Kormos:** I move that the motion identified as motion number 18 be amended by adding the words "from a qualified medical practitioner."

**The Chair:** All those in favour of the amendment? Opposed, if any? Carried.

Back to you, Mr Kormos.

**Mr Kormos:** I move that the motion, as amended, section 34 of the Public Service Act, as set out in section 15 of the bill, be amended by adding the following subsection:

"Medical information excluded

"(9) Section 34 of this act does not authorize the use of personal information that is medical information from a qualified medical practitioner."

**The Chair:** All those in favour? Opposed, if any? The amendment carries.

With that we will revert back to section 1 of the act. Are there any amendments or debate on section 1?

**Mr Kormos:** Yes, we are opposed to section 1.

**The Chair:** Thank you. Any further debate? Seeing none, I'll put the question. All those in favour of section 1?

**Mr Wettlaufer:** I'm sorry, I was looking at the amendment.

**The Chair:** OK. We're back at section 1, not amendment 1.

All those in favour of section 1? Opposed? Section 1 is carried.

Section 2: any amendments or debate?

**Mr Kormos:** Yes. I move that subsection 7.1(1) of the Public Service Act, as set out in section 2 of the bill, be amended by adding "in accordance with the regulations" after "to the term classified service."

**The Chair:** Would you like to speak to the motion?

**Mr Kormos:** Very briefly, the purpose is to anticipate, or there is perhaps some feckless anticipation, that there would be regulations defining the conditions under which there can be term classified service appointments.

**The Chair:** Any further debate?

**Mr Wettlaufer:** We feel that the Civil Service Commission has the authority to determine the circumstances under which term classified employees may be used and appointed. This allows the civil service to efficiently and effectively exercise control over the use and appointment of term classified staff in a responsive manner. We don't believe that the limitation is necessary.

**The Chair:** Any further debate? Seeing none, I'll put the question.

Mr Kormos has moved NDP motion number 1. All those in favour? Opposed? The amendment fails.

Shall section 2 carry?

**Mr Kormos:** Debate on section 2, sir. We're opposed to section 2 of the bill.

**The Chair:** Duly noted.

All those in favour of section 2? Opposed? Section 2 is carried.

Section 3.

**Mr Kormos:** I move that section 3 of the bill be struck out and the following substituted:

"3. Subsection 8(1) of the act is repealed and the following substituted:

"Appointment by minister to unclassified service

"(1) A minister or any public servant who is designated in writing for the purpose by him or her may appoint, in accordance with the regulations, for a period of not more than three years on the first appointment and for any period on any subsequent appointment a person to a position in the unclassified service in any ministry over which the minister presides."

If I may, similar to amendment number 1, this adds the words "in accordance with the regulations," with the anticipation that there could be regulations restricting that power of appointment or defining the conditions under which it takes place.

**The Chair:** Any further debate?

**Mr Wettlaufer:** Again, it's very similar to the first amendment. We feel that the CSC has the authority to determine the circumstances. We think the limitations are definitely unnecessary.

**The Chair:** Any further debate?

Seeing none, Mr Kormos has moved NDP motion number 2. All those in favour? Opposed? The amendment fails.

Section 3.

**Mr Kormos:** We're opposed to section 3 as it stands unamended.

**The Chair:** Further debate? All those in favour of section 3? Opposed? Section 3 is carried.

Section 4: any debate?

**Mr Kormos:** We are opposed to section 4 of the bill.

**The Chair:** Any further debate? Seeing none, I will put the question. All those in favour of section 4? Opposed? Section 4 is carried.

Section 5, Mr Wettlaufer.

**Mr Wettlaufer:** The government moves that subsection 23(1) of the Public Service Act, as set out in section 5 of the bill, be struck out and the following substituted:

"Delegation of powers, deputy minister

"(1) With the consent of his or her minister, a deputy minister may delegate in writing any of his or her powers under this act to a public servant, a class of public servant or, with the commission's approval, to another person or persons, except that he or she may only delegate his or her powers under subsection 22(3), (4) or (4.1) to a public servant or a class of public servant."

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**The Chair:** Further debate?

**Mr Kormos:** We recognize that this is some modification to the original proposal and we support it, although we certainly wish that it were stronger.

**The Chair:** Any further debate on the amendment?

**Mr Wettlaufer:** Just a comment that we feel that it's a response to the NDP-suggested amendment number 6. That's it.

**The Chair:** Seeing no further debate, all those in favour of the amendment? Opposed? The amendment carries. That takes us now to page 4.

**Mr Bruce Crozier (Essex):** I move that subsection 23(1) of the Public Service Act, as set out in section 5 of the bill, be struck out and the following substituted:

"Delegation of powers, deputy minister

"(1) With the consent of his or her minister, a deputy minister may delegate in writing any of his or her powers under this act to a public servant or a class of public servant."

**The Chair:** Do you wish to speak to the amendment?

**Mr Crozier:** Yes, very briefly. In debate we spoke to this. We feel that the words of the bill as it stands would allow, with the referral to the commission's approval to any other person or persons—that this is simply a privatization move and that it would in effect lose accountability in that it could be moving to the private sector.

**Mr Kormos:** We support this amendment.

**Mr Wettlaufer:** We think that the flexibility in the initial bill would be lost with this amendment. This removes the right of the deputy minister to delegate authority to another person or persons.

**The Chair:** Any further debate? Seeing none, I'll put the question on Liberal motion number 4. All those in favour? Opposed? That amendment fails.

**Mr Levac:** Mr Chair, for clarification: I notice across from me there are three people. Do Mr Wettlaufer and yourself count as a vote when necessary?

**The Chair:** Mr Wettlaufer is subbed in.

**Mr Levac:** OK. I just didn't understand the process. I wanted to make sure it was clear.

**The Chair:** My hand hasn't been going up.

**Mr Levac:** No, I just needed to know who does.

**The Chair:** I only do that in a tie.

That takes us to page number 5.

**Mr Crozier:** I move that subsection 23(2) of the Public Service Act, as set out in section 5 of the bill, be struck out and the following substituted:

"Delegation of duties, deputy minister

"(2) With the consent of his or her minister, a deputy minister may delegate in writing any of his or her duties under this act to a public servant or a class of public servant."

For the same reason as I stated before, that the commission's approval to delegate to another person or persons simply moves it away from the government and loses accountability and simply is a move to privatization.

**Mr Kormos:** New Democrats support this amendment.

**Mr Wettlaufer:** Again, we feel that the deputy minister needs the right to delegate to another person or persons because of flexibility. We must have that flexibility in today's workplace.

**The Chair:** Any further debate? Seeing none, I'll put the question on Liberal motion number 5. All those in favour? Opposed? That amendment is lost.

Now we need Mr Kormos.

**Mr Kormos:** I move that section 23 of the Public Service Act, as set out in section 5 of the bill, be amended by adding the following subsection:

"Restriction

"(2.1) Despite subsections (1) and (2), powers of recruitment, appointment, classification, termination and release may not be delegated to a person who is not a public servant."

By way of explanation, this amendment is designed to ensure that it is a public servant to whom a power is delegated; that is to say, the powers including hiring,

firing, classifying, appointing an employee may not be delegated to a non-public servant.

**Mr Levac:** The Liberal caucus will support that amendment for the same purposes as Mr Crozier's previous amendments.

**Mr Wettlaufer:** Again, we introduced government motion number 3 as a response to this. We feel that number 6, the NDP motion, is too restrictive.

**The Chair:** Any further debate? Seeing none, I'll put the question on Mr Kormos's motion. All those in favour? Opposed? The amendment is lost.

**Mr Crozier:** I move that section 23 of the Public Service Act, as set out in section 5 of the bill, be amended by adding the following subsection:

"Publication

"(4) A rule or requirement established under subsection (3) shall be published in the Ontario Gazette."

**The Chair:** Any further debate?

**Mr Kormos:** New Democrats support that amendment.

**Mr Wettlaufer:** We feel that it is a technical amendment to allow those who have been delegated or sub-delegated functions in the regulations to take steps incidental to carrying out the matters required by the regulations and we don't feel that it's appropriate or necessary to publish in the Ontario Gazette.

**The Chair:** Any further debate?

**Mr Crozier:** Simply to say I can't imagine why the government wouldn't want it published. It's another way, I guess, that the government doesn't want to inform the public, and that's the reason that we submitted this motion.

**The Chair:** Any further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is lost.

**Mr Crozier:** I'm getting kind of discouraged here, Chair.

**The Chair:** Mr Kormos has one already.

**Mr Kormos:** Is that a message about likelihood of future success?

**Mr Crozier:** I move that section 23.1 of the Public Service Act, as set out in section 5 of the bill, be struck out.

**The Chair:** Further debate?

**Mr Kormos:** New Democrats support this amendment.

**Mr Wettlaufer:** Section 23.1 of the bill allows the Civil Service Commission to delegate its functions in a regulation to a deputy. Section 24 of the Public Service Act allows the CSC to delegate certain of its specified powers or functions. The proposed section 23.1 is necessary to add flexibility to allow powers and duties and regulations to also be delegated.

**The Chair:** Any further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is lost.

Any further debate on section 5? I guessed as much. Mr Kormos.

**Mr Kormos:** New Democrats oppose section 5 of the bill as it stands.

**The Chair:** Thank you very much. Any further debate? Seeing none, shall section 5, as amended carry? It is carried.

Section 6.

**Mr Crozier:** I move that subsection 24(2) of the Public Service Act, as set out in section 6 of the bill, be struck out and the following substituted:

"Subdelegation

"(2) A deputy minister who is authorized under subsection (1) to exercise and perform powers and functions of the commission may in writing delegate that authority to any public servant or class of public servant."

**The Chair:** Would you like to speak to that amendment?

**Mr Crozier:** I would again, just to say that under that subsection (c), "with the commission's approval another person or persons" is merely a move to privatization. With that, the government is foisting accountability, if there is any left, onto the private sector.

**Mr Kormos:** New Democrats support this amendment.

**Mr Wettlaufer:** We feel that subsection 24(2) as proposed initially is needed for flexibility in the modern workplace.

**The Chair:** Any further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is lost.

Further debate on section 6?

**Mr Kormos:** We are opposed to section 6 as it stands.

**The Chair:** Any further debate? Seeing none, shall section 6 carry? It is carried.

Section 7, any debate?

**Mr Kormos:** We're opposed to section 7.

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**The Chair:** Anything further? Shall section 7 carry? It is carried.

Section 8.

**Mr Wettlaufer:** I move that the definition of "association" in subsection 26(1) of the Public Service Act, as set out in subsection 8(2) of the bill, be struck out and the following substituted:

"'Association' means an association which is not affiliated directly or indirectly with a trade union or with any organization that is affiliated directly or indirectly with a trade union and which represents a majority of the members of the Ontario Provincial Police force and of other persons who either are instructors at the Ontario Police College or who are under the supervision of the commissioner of the Ontario Provincial Police or of the chief firearms officer for Ontario and described in paragraph 2 of subsection (2); ('association')."

**The Chair:** Do you wish to speak to it?

**Mr Wettlaufer:** It's an amendment proposed to reflect the change in the name of the chief provincial firearms officer to chief firearms officer and that is because the name of the position was changed in 1998 from chief provincial firearms officer to chief firearms

officer following the introduction of the federal legislation.

**Mr Kormos:** Perhaps I can be of help to the parliamentary assistant. It also embraces, as I understand it—and you can correct me if I'm wrong, Mr Wettlaufer—the instructors of the Ontario Police College.

**Mr Wettlaufer:** Yes, it does, at their request. That is correct.

**Mr Kormos:** And the New Democrats are opposed to this.

**The Chair:** Any further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment carries.

**Mr Wettlaufer:** I move that paragraph 2 of subsection 26(2) of the Public Service Act, as set out in subsection 8(4) of the bill, be amended by striking out the portion before subparagraph i and substituting the following:

"2. The civilian employees' bargaining unit which shall be established if the association is certified under subsection 28.0.5(1) as the exclusive bargaining agent for any of the three groups of public servants described in subsection 28.0.2(1) and shall consist of persons who either are instructors at the Ontario Police College or who are under the supervision of the commissioner of the Ontario Provincial Police or of the chief firearms officer for Ontario and who,"

**The Chair:** Further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment is carried.

**Mr Wettlaufer:** I move that subsection 8(5) of the bill be struck out and the following substituted:

"(5) Subsection 26(3) of the act is repealed and the following substituted:

"Bargaining authority

"(3) The association is the exclusive bargaining agent authorized to represent the employees who are part of a bargaining unit referred to in subsection (2) in bargaining with the employer on terms and conditions of employment, except as to matters that are exclusively the function of the employer under subsection (4), and, without limiting the generality of the foregoing, including rates of remuneration, hours of work, overtime and other premium allowance for work performed, the mileage rate payable to an employee for miles traveled when the employee is required to use his or her own automobile on the employer's business, benefits pertaining to time not worked by employees, including paid holidays, paid vacations, group life insurance, health insurance and long-term income protection insurance, the procedures applicable to the processing of grievances, the methods of effecting promotions, demotions, transfers, layoffs or reappointments and the conditions applicable to leaves of absence for other than any elective public office, political activities or training and development."

**The Chair:** Further debate? None? I'll put the question. All those in favour of the amendment? Opposed? The amendment is carried.

Further debate on section 8?

**Mr Kormos:** New Democrats are opposed to section 8.

**The Chair:** Anything further? Seeing none, shall section 8, as amended, carry? It is carried.

Section 9. Any debate?

**Mr Kormos:** New Democrats are opposed to section 9.

**The Chair:** Any further debate? Seeing none, shall section 9 carry? Section 9 is carried.

Sections 10 and 11. Any debate?

**Mr Kormos:** New Democrats are opposed to sections 10 and 11.

**The Chair:** Anything further? Seeing none, shall sections 10 and 11 carry? Sections 10 and 11 are carried.

Section 12.

**Mr Wettlaufer:** I move that the definition of "designated position" in section 28.0.1 of the Public Service Act, as set out in section 12 of the bill, be struck out and the following substituted:

"Designated position" means an employment position held by a public servant who either is an instructor at the Ontario Police College or who is under the supervision of the commissioner of the Ontario Provincial Police or of the chief firearms officer for Ontario and who is represented for purposes of collective bargaining by either AMAPCEO, OPSEU or PEGO; ('poste désigné')."

**The Chair:** Any further debate? All those in favour of the amendment? Opposed? The amendment carries.

Further debate on section 12?

**Mr Kormos:** We're opposed to it.

**The Chair:** Shall section 12, as amended, carry? Section 12, as amended, is carried.

Section 13. Any debate?

**Mr Kormos:** The New Democrats are opposed.

**The Chair:** Any further debate? Seeing none, shall section 13 carry? Section 13 is carried.

Section 14.

**Mr Crozier:** I move that subsection 29(5) of the Public Service Act, as set out in subsection 14 of the bill, be struck out.

**The Chair:** Mr Crozier, do you wish to speak to your amendment?

**Mr Crozier:** Just that when it suggests that the Regulations Act should not apply, we feel it should.

**Mr Wettlaufer:** We feel that the motion to strike subsection 29(5)—

**Mr Crozier:** Let's say it adds flexibility.

**Mr Wettlaufer:** No. We feel it should remain in the bill. The regulation itself is subject to the Regulations Act.

**Mr Kormos:** The New Democrats support the amendment.

**The Chair:** Further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment is lost.

Any further debate on section 14?

**Mr Kormos:** We are opposed to section 14 as it stands.

**The Chair:** Shall section 14 carry? Section 14 is carried.

Section 15.

**Mr Wettlaufer:** I move that subsection 33(1) of the Public Service Act, as set out in section 15 of the bill, be struck out and the following substituted:

"Criminal conviction or discharge considered conclusive evidence

"(1) If a public servant is convicted or discharged of an offence under the Criminal Code (Canada) in respect of an act or omission that results in discipline or dismissal and the discipline or dismissal becomes the subject matter of a grievance before the Public Service Grievance Board, proof of the conviction or discharge shall, after the time for an appeal has expired or, if an appeal was taken, it was dismissed and no further appeal is available, be taken as conclusive evidence that the public servant committed the act or omission."

This is in line with the Criminal Code. The amendment brings the provisions consistent with subsection 22(1) of the Ontario Evidence Act.

**Mr Kormos:** While I appreciate the purpose of the amendment, New Democrats believe that this section is designed to defeat the litigation currently before the Court of Appeal, to circumvent that judgment, which I don't believe we are even aware of yet. I think there has been a reserved judgment. Quite frankly, New Democrats would have preferred to have heard that judgment. That would have determined what the state of the law was in Ontario at least. If that judgment was one which said, "Proof of conviction is in and of itself complete evidence of a commission of an act," as this bill purports to say, then I would have lived with the law in that regard. I think it's entirely inappropriate for the government to circumvent an appeal court judgment before that judgment is even rendered or made public. We are therefore opposing this amendment and this section and the intent.

**The Chair:** Any further debate? Seeing none, I'll put the question on the amendment. All those in favour? Opposed? The amendment carries.

**Mr Wettlaufer:** I move that subsection 33(2) of the Public Service Act, as set out in section 15 of the bill, be struck out and the following substituted:

"Adjournment pending appeal to be granted

"(2) If an adjournment of a grievance is requested pending an appeal of a conviction or a discharge mentioned in subsection (1), the Public Service Grievance Board shall grant the adjournment."

**The Chair:** Further debate? Seeing none, all those in favour? Opposed? That amendment carries.

**Mr Kormos:** I move that section 34 of the Public Service Act, as set out in section 15 of the bill, be amended by striking out "person" wherever it occurs and substituting in each case "public servant."

The purpose of this is to maintain the integrity of the public service.

**Mr Levac:** We in the Liberal caucus would support that amendment.

**Mr Wettlaufer:** We don't agree with the proposed amendment.

**Mr Crozier:** Any reason why?

**Mr Wettlaufer:** Security measures are already in place to protect the privacy of personal employee information, and the bill contains provisions to ensure human resources information is collected, used and disclosed only to the extent necessary. It restricts the use of contractors whose services may be required for efficient and effective administration.

1610

**The Chair:** Any further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment is lost.

As you know, we've already dealt with Mr Kormos's motion number 18, which was carried.

Shall section 15, as amended, carry?

**Mr Kormos:** The New Democrats are opposed to section 15 as it stands.

**Mr Wettlaufer:** Is there any part that you agree with?

**The Chair:** OK, I'll ask the question again. Shall section 15, as amended, carry? Section 15, as amended, is carried.

Section 16.

**Mr Wettlaufer:** I move that paragraph 1 of subsection 1.1(3) of the Crown Employees Collective Bargaining Act, 1993, as set out in section 16 of the bill, be struck out and the following substituted:

"1. Members of the Ontario Provincial Police and public servants who either are instructors at the Ontario Police College or who are under the supervision of the commissioner of the Ontario Provincial Police or of the chief firearms officer for Ontario and who are represented by the Ontario Provincial Police Association for purposes of collective bargaining."

**The Chair:** Further debate? Seeing none, all those in favour of the amendment? Opposed. It carries.

Further debate on section 16?

**Mr Kormos:** New Democrats are opposed.

**The Chair:** Shall section 16, as amended, carry? It is carried.

Section 17. Any debate?

**Mr Kormos:** New Democrats are opposed to section 17.

**The Chair:** Shall section 17 carry? Section 17 is carried.

Section 18.

**Mr Wettlaufer:** I move that subsection 48.1(1) of the Crown Employees Collective Bargaining Act, 1993, as set out in section 18 of the bill, be struck out and the following substituted:

"Criminal conviction or discharge considered conclusive evidence

"(1) If a crown employee is convicted or discharged of an offence under the Criminal Code (Canada) in respect of an act or omission that results in discipline or dismissal and the discipline or dismissal becomes the subject matter of a grievance before the Grievance Settlement Board, proof of the employee's conviction or

discharge shall, after the time for an appeal has expired or, if an appeal was taken, it was dismissed and no further appeal is available, be taken by the Grievance Settlement Board as conclusive evidence that the employee committed the act or omission."

**The Chair:** Further debate?

**Mr Kormos:** We oppose the amendment because we oppose, of course, the section being amended. Once again, this is a matter that's before the Court of Appeal. The Court of Appeal is deciding precisely that; whether or not proof of the conviction is in itself conclusive evidence that the person convicted committed the act or omission. I am prepared to live with what the Court of Appeal says but, until we decide that, I believe it's premature and inappropriate for this type of amendment or the section that its amending to be proposed by the government or anybody else.

**Mr Wettlaufer:** The term "discharge" is not an acquittal. Those who commit an offence are as guilty if they've been discharged as they are if they have been convicted. We feel the amendment brings the provisions consistent with section 22(1) of the Ontario Evidence Act.

**The Chair:** Further debate? Seeing none, all those in favour? Opposed? It is carried.

**Mr Wettlaufer:** I move that section 48.1(2) of the Crown Employees Collective Bargaining Act, 1993, as set out in section 18 of the bill, be struck out and the following substituted:

"Adjournment pending appeal to be granted

"(2) If an adjournment of a grievance is requested pending an appeal of a conviction or a discharge mentioned in subsection (1), the Grievance Settlement Board shall grant the adjournment."

**The Chair:** Further debate? Seeing none, all those in favour? Opposed? The amendment is carried.

Further debate on section 18?

**Mr Kormos:** New Democrats are opposed to section 18.

**The Chair:** Shall section 18, as amended, carry? Section 18, as amended, is carried.

Sections 19 and 20. Any debate?

**Mr Kormos:** I just want to make it quite clear; obviously by the time we've voted on the matter of clauses or sections 19 and 20, and then I trust on the full title, that's it. It's over with.

I want to indicate to you that New Democrats are very concerned about this Bill 25, the tone of the bill and quite frankly what the intent of the bill is. We believe very strongly that the bill is the process of paving the way for further and, at the end of the day, what amounts to almost complete privatization of what we now hold and should hold in high regard, that is to say, our public service, those public service workers who serve us in any number of communities, probably every community in the province, and in so many different ways. New Democrats condemn this agenda of the privatization of public sector jobs. We condemn what is an attack on the public service.

There was, during the brief debate around second reading of this bill, some rather thorough analysis of why an independent, professional public service is critical to, among other things, a democratic society. I regret to tell you that I believe this government will realize, down the road, and subsequent governments will rue the day when this government took actions like it's taking in the course of Bill 25.

New Democrats have a high regard for the public service. We do everything we can to support it. We have aligned ourselves very clearly with OPSEU—the Ontario Public Service Employees Union—their membership and their leadership, Leah Casselman. I'm proud of that association with OPSEU and its leadership.

We will be opposing this bill on both sections 19 and 20 and on the full title vote here in committee.

As you know, Chair, the government has moved time allocation once again to force this bill through. The process of public hearings was deplorable. There clearly was but one brief period in an afternoon to hear from people. I simply want to register with you and with the other members of this committee our strongest possible concern about this bill, about its intent, about what it will do in the most negative way, and indicate that New Democrats are opposing it here in committee as well as on third reading.

**Mr Crozier:** Considering brevity, I can say now that we, the Liberal caucus, oppose all the sections of this bill, oppose the bill itself and will oppose and speak to that on third reading, notwithstanding the fact that time will be very limited.

When I had my opening remarks on Bill 25, I went to some length to give the history of the public service, not only to understand chronologically how the public service came about, but why it came about. As I spoke at that time, and again very briefly today, I feel anything that allows the move toward privatization, which I think this is, demeans the public service and, just as importantly, opens the government up to influence by those who the Premier has often said he would not be influenced by, and those are special interests. Those special interests will want to fill the void that's going to be left by taking away the responsibility and accountability of the public service.

It wasn't just by mistake that the public service was formed. It was formed because the political influence that was brought to bear on governments came to the point where there was so much patronage historically in the system that, in my view, something had to be done. I regret that I see this bill as a move away from that and therefore I think is a step backwards. Those, among all the reasons that we gave in debate at second reading, are the reasons we feel we cannot support this bill in its entirety.

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**Mr Levac:** I want to echo and maybe reinforce in another direction Mr Crozier's comments. One of the bedrocks of our democracy is to ensure that no one particular group ever dominates to the degree that would

bring harm to our communities. The concern I will lay out here is that we may end up seeing that happen; maybe by default but I would hope not by design.

There's a report from the Task Force on Public Service Values and Ethics. What I fear is happening is the slow erosion of that. Their foundation is based on getting the best and most honest advice from the public service "in the public interest even if it is not what the government of the day wants to hear." In a quotation to this foundation that's been provided in a report, on pages 47 to 49, public servants feel the overriding fact to "speak the truth to power." What I fear may be happening in this bill, save and except the argument that it provides for flexibility, is that we are shifting that speaking of the truth to power and inevitably what I believe may be happening is that when you put different people in there, not having the public servant as the base, you may not be hearing "speak the truth to power." What we may see a shift to is "speak to what one wants to hear."

If that does take place, then we will not be served as what the public service is all about and we may indeed find ourselves down a slippery slope of renewing what was happening before the public service was put in place. I fear it would take too long a time to reassemble that. We see that happening in the teaching profession, we see that happening in the nursing profession. As much as everyone is now standing up and saying, "We value you," it's too late. There are an awful lot of people who will not return, who have not returned and have made statements to the same fact that, "Because you didn't value us in the first place, we're not coming back."

My caution is based on a concern that history has taught us that the creation of the public service was for the good of the citizenry, not for the good of the government. Therein lies my concern about Bill 25, save and except the concerns I laid out in my previous statement to Mr Adkin regarding the membership having the freedom to choose its association as long as road barriers are not put up to discredit that in any way, shape or form; and my discussions with local OPPA members that there are pieces of evidence that make it very clear that within this particular bill are probably areas that we can accept as changes to the public service, that are broad enough to be accepted by many.

I do have a question of clarification, Chair, if I may. We have received in our packages on Bill 25, I believe, an exhibit that was put on our desk after clause-by-clause, exhibit 203009, filed on June 18, 2001. Is that after the date on which submissions are provided? I don't have my general government note with me in terms of the subcommittee report, Mr Chairman. While you're looking that up, if it's within that date, that time frame, I accept the report, and if it's not, I respectfully suggest that it should be removed and destroyed.

**The Chair:** It has been the practice of committees to continue to circulate information after bills. They just don't form part of the consideration as each committee is drafting their proposed amendments.

**Mr Levac:** I understand. Thank you.

**The Chair:** I can tell you, even with Bill 159, which you will recall we held hearings on back in February, last week I had another submission directed to me in my capacity as Chair.

**Mr Levac:** I just don't know the process.

**The Chair:** It's a fair question, Mr Levac. The reason for putting the deadlines in place is to be fair to all three parties, that you have the benefit, circulated from the Chair, of whatever submissions have been received in a timely fashion to allow you to craft amendments for today. If anyone chooses to miss those deadlines, it's still information we think is appropriate to every member of the committee, but obviously they've missed the opportunity to have their input before an amendment is crafted.

**Mr Levac:** I understand how it works. Thank you, Mr Chairman. I appreciate that.

**The Chair:** Any further debate?

**Mr Wettlaufer:** There will be ample opportunity to debate this when it comes up for third reading, but I think it's important to mention to every member of the committee right now that our government has felt right from day one in 1995 that it's necessary to re-engineer government for the 21st century, and we're in it now, of course. We need to harness the expertise that puts government, no less than business, on the cutting edge. Because of that, we feel that this legislation here and the amendments incorporated will make the public service stronger, more flexible and responsive to the needs of the taxpaying public.

**The Chair:** Further debate? Seeing none, shall sections 19 and 20 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 25, as amended, carry?

**Mr Kormos:** Recorded vote, please.

#### Ayes

Dunlop, Galt, Miller, Wettlaufer.

#### Nays

Crozier, Kormos, Levac.

**The Chair:** Bill 25, as amended, is carried.

Shall I report the bill, as amended, to the House?

**Mr Kormos:** Recorded vote, please.

#### Ayes

Dunlop, Galt, Miller, Wettlaufer.

#### Nays

Crozier, Kormos, Levac.

**The Chair:** I shall report the bill, as amended, to the House. Thank you very much for your input on that.

### HIGHWAY TRAFFIC AMENDMENT ACT (OUTSIDE RIDERS), 2001 LOI DE 2001 MODIFIANT LE CODE DE LA ROUTE (PASSAGERS À L'EXTÉRIEUR D'UN VÉHICULE)

Consideration of Bill 33, An Act to amend the Highway Traffic Act to prohibit persons from riding on the outside of a motor vehicle / Projet de loi 33, Loi modifiant le Code de la route pour interdire à des personnes de circuler à l'extérieur d'un véhicule automobile.

**The Chair:** We will now move into the second order of business before us here today, and that will be clause-by-clause consideration of Bill 33, An Act to amend the Highway Traffic Act to prohibit persons from riding on the outside of a motor vehicle. The clerk did send copies of the amendments out, but if anyone—

*Interjection.*

**The Chair:** The copy I have has three amendments. Is that correct?

**Mr Doug Galt (Northumberland):** There are three amendments. That's right.

Unfortunately for the parliamentary assistant to the Minister of Transportation, there are two bills going to hearings today, as was last Monday afternoon, but I'm quite comfortable putting the motions forward, Chair, if you'd like to proceed.

**The Chair:** Please do.

**Mr Galt:** Just a quick comment before I put them—

**The Chair:** Before we do, I guess I'll invite input on section 1 of the bill.

**Mr Galt:** Basically, and I'll put it into the record, thanks to all the committee members that were here last week for their unanimous support of the direction. Basically what I'll be reading in is the same intent going into a different section of the bill, but accomplishing the same, as well as riding in trailers.

I move that section 1 of the bill be struck out and the following substituted:

"1. The Highway Traffic Act is amended by adding the following section:

"Riding in back of trucks prohibited

"188.1 (1) No person shall drive a commercial motor vehicle on a highway while any person occupies the truck or delivery body of the vehicle.

"Same

"(2) No person shall occupy the truck or delivery body of a commercial motor vehicle while the vehicle is being driven on a highway.

"Riding in trailers prohibited

"(3) No person shall drive a motor vehicle on a highway while any person occupies a vehicle being towed or drawn by the motor vehicle.

"Same

"(4) No person shall occupy a vehicle being towed or drawn by a motor vehicle on a highway.

"Identification of passengers

“(5) Where a police officer or officer appointed for carrying out the provisions of this act believes that a person is contravening subsection (2) or (4), the officer may require that the person provide identification of himself or herself.

“Same

“(6) Every person who is required to provide identification of himself or herself under subsection (5) shall identify himself or herself to the officer by surrendering his or her driver's licence or, if he or she is unable to surrender a driver's licence, by giving his or her correct name, address and date of birth.

“Power of arrest

“(7) A police officer may arrest without warrant any person who does not comply with subsection (6).

“Regulations

“(8) The Lieutenant Governor in Council may make regulations,

“(a) exempting any person or class of persons and any vehicle or class of vehicles from subsections (1), (2), (3) and (4);

“(b) prescribing conditions for the exemptions; and

“(c) prescribing the circumstances in which the exemptions are applicable.

“Same

“(9) A regulation may prescribe different conditions and different circumstances for different classes of persons or vehicles.”

1630

I think basically what we're seeing here is how legislative counsel drew it up first, sort of looking at it under seat belt legislation, and when the ministry looked at it, it would make more sense, according to them, under the Highway Traffic Act, to come in under a towing section. There's a section already there about the towing of bicycles or toboggans behind cars or trucks. Also, there is a section about boats and house trailers, which you're not to ride in. This is tidying up all trailers and riding in all trucks.

That is the basis of that motion and the core of this particular bill. I look forward to comments from other members of the committee or possibly from staff, if there are any questions to staff.

**The Chair:** Any further debate?

**Mr Crozier:** It's my understanding that we support this bill of Mr Galt's and I'm sure we'll continue to do that. At the risk of being told, “You just don't understand,” I'll ask it anyway. In about the third or fourth sentence, after “188.1,” “No persons shall drive a commercial motor vehicle on a highway while any person occupies the truck....” If I stop there, how can you drive it on a highway and not occupy it?

**Mr Galt:** I may have to go to staff to explain that.

**Mr Crozier:** And the next one is the same. It says, “No person shall occupy the truck or....” and then it goes on. I'm wondering if it shouldn't say “occupies the truck delivery body of the vehicle.”

**Mr Galt:** Mr Ward, could you come forward? Is that in order, Chair?

**Mr Crozier:** It's that word “or” that is confusing to me.

**Mr Galt:** I have to bow to legal terminology. At the time, last week, we talked about the bed of the truck—just as long as it's properly worded.

**The Chair:** Perhaps you could just introduce yourself for the purpose of Hansard.

**Mr David Ward:** I'm David Ward of the road user safety branch of the Ministry of Transportation.

**The Chair:** Welcome.

**Mr Ward:** Thank you. If you read that motion as one full sentence without stopping or breaking, the intent of that is to talk about truck bodies and delivery truck bodies as one. So the intent is to capture the body of a truck as well as the body of a delivery truck. That was the way it was written.

**The Chair:** Can I just ask you—Mr Crozier didn't have the benefit of our earlier discussion—if you can confirm or contradict this. We were told all pickup trucks are defined as commercial vehicles, so when they use the term “truck”—I believe that captures the truck body—that is designed to capture not just big commercial vehicles such as you and I as laymen might envision but even pickup trucks.

**Mr Crozier:** Even if that's the case, how can you drive it without occupying it? It says, “No person shall drive a commercial vehicle on a highway while any person occupies the truck....” You may want me to continue on, but it does say “or,” so I propose that it can be taken as two separate sentences or two separate flows of thought. I'm not trying to be difficult. I'm just saying that when that word “or” pops up in there, it means one thing or another. I don't know how you can drive a commercial vehicle if you don't occupy it; or, in the next one, if no person can occupy the truck, I don't know how it can be driven on the highway.

**Mr Galt:** So would you be more comfortable if after “truck” we said “body” or “delivery body”?

**Mr Crozier:** No. I'm thinking that if I were reading it, and thank goodness I'm not a lawyer reading it, I would remove the word “or.”

**Mr Galt:** I see what you're suggesting.

**Mr Crozier:** Yes, that it's a truck delivery body, or a truck delivery body, blah, blah. I'm not going to belabour the point. If a lawyer tells me that's the way it should be—

**The Chair:** Perhaps we could ask Mr Ward if there is a consistency with the use of this terminology elsewhere in the Highway Traffic Act already.

**Mr Ward:** Yes, I would suggest that it is consistent with other parts of the Highway Traffic Act. The way that provision is written, “No person shall drive a commercial motor vehicle on a highway while any person occupies the truck,” this section is not referring directly to the driver of the vehicle; it's referring to another person who occupies the truck and/or the delivery body. That first offence—

**Mr Crozier:** In the first one it says it says “drive.”

**Mr Ward:** "No person shall drive" the vehicle, "a commercial motor vehicle on a highway," and then it goes on to say, "while any other person occupies the truck or delivery body of the vehicle." So it's in fact dealing with the third party there.

**Mr Crozier:** Have you just put another word "other" in? You just said, "Any other person."

**Mr Ward:** "Any person."

**Mr Crozier:** Again, I don't know how you could drive the truck if there was somebody in the passenger seat. That's another person.

**Mr Galt:** Is there a definition of "truck"? Does that mean the delivery part of it?

**Mr Ward:** If we took the word "or" out and put "while any other person occupies the truck or delivery body of the vehicle," does that capture it?

**Mr Crozier:** "While any other person occupies a truck delivery body," just taking the word "or" out.

**Mr Ward:** I think when we were envisioning a delivery body we were trying to capture the group who might be riding in the back of the cube van.

**Mr Crozier:** Yes. I understand what you're after. We won't belabour this beyond 6 o'clock.

**Mr Galt:** Just as long as it says what we want it to say.

**Mr Crozier:** I understand exactly what you want it to say.

**Mr Norm Miller (Parry Sound-Muskoka):** It's under "Riding in back of trucks prohibited."

**Mr Galt:** It is a good point. There is a heading.

**Mr Miller:** The title of it is "Riding in back of trucks prohibited." That covers it. I agree with you, though.

**Mr Ward:** I think what legislative counsel may have done, if I may, is taken the current definition of a commercial motor vehicle out of the Highway Traffic Act, which is verbatim, and transferred it to the motion in this bill. So we already have the definition of a commercial motor vehicle meaning "a motor vehicle having permanently attached thereto a truck or delivery body."

So it's verbatim as per the definition, the current wording of a commercial motor vehicle.

**Mr Galt:** So in that way you're referring back to the definition of "truck," which should be OK.

**Mr Ward:** Right, because the commercial motor vehicle is already defined in this other section of the act and it's consistent with that definition.

**Mr Galt:** I'm reasonably comfortable with it now.

**Mr Crozier:** Point made.

**The Chair:** Loath as I am to enter into the debate, would adding the word "body" after "truck" not make it clear, to address the point raised by Mr Crozier: the "truck body or delivery body"? If our worst sin is that it's slightly duplicative, can we live with that, that it might address, as opposed to a truck "cab"—I think "truck body" would be clearly understandable. Mr Wettlaufer?

**Mr Wettlaufer:** Chair, are you suggesting that legalese is not proper English?

**The Chair:** We have entire commissions set up to deal with that question.

**Mr Crozier:** We know what we want to do. We just don't want some lawyer grabbing it and saying, "Well"—

**Mr Galt:** As the Chair suggested, if we put "body" in there, what harm would it do?

**Mr Ward:** The only thing is, it may create an inconsistent application with our current definition of "commercial motor vehicle," which is what I just pointed out. So in the interest of consistency, I think it might be wise for us to be consistent with our current definition of the act.

**The Chair:** OK. Thank you.

**Mr Levac:** Having said what you just said, can we take a look at the consistency of the present law, if it states the same thing, as to whether or not your department or the legal department feels that it does answer what Mr Crozier is bringing to our attention today? If it does do that, then I'm assuming you would be able to make that change somewhere down the line to satisfy that.

I personally will weigh into this and say, if I read this the way I read in terms of the use of English, I can say that it says "the truck," and in terms of what the Chairman offered and everything else. If it's to maintain the consistency, can we take a look at both of those?

**Mr Ward:** I think that's fair.

**The Chair:** Thank you. Any further debate? Seeing none, I'll put the question on the—

Sorry. Mr Miller?

**Mr Miller:** Just in that same section, the use of the word "highway." Previously, I believe, you had a speed in mind.

**Mr Galt:** We've removed all exemptions and they will appear after some consultation as a regulation. That's the intent.

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**Mr Miller:** So it could apply to a secondary road as well?

**Mr Galt:** As I understand, the definition of a highway is all commercially travelled roads, which is gravel roads, paved roads, the 401.

**Mr Ward:** Yes, a generic term.

**Mr Galt:** It's anything that is a public roadway.

**Mr Crozier:** I just hope that on September 1, when the Harrow Fair opens and I ride in the back of that little red truck, some police officer doesn't come and get me, that's all.

**Mr Galt:** Some of the thinking, and I appreciate your comment, has to do with parades. Most parades are approved by the local council. I think similarly we can come up with—I'm going to meet with the Farm Safety Association and the Ontario Federation of Agriculture to look at an agricultural exemption etc. Garbage trucks, as municipal vehicles, need to be looked at, fire trucks etc.

**Mr Levac:** That is covered off, as was told to us from this perspective by, I believe, regulation 8(c), describing the circumstances in which the exemptions are applicable. In that discussion it was believed that by taking the exemptions out of the original proposal, it would provide us not only with these bills' exemptions but with the time

it takes to get the exemptions fleshed out, to speak to Mr Crozier's issue.

**Mr Galt:** Just to help Mr Crozier, the suggestion was that it would be helpful if this received third reading and royal assent at the end of this month and then the ministry could do some advertising. This has gone through. However, it's not proclaimed until the regulations would be in place in the fall. So the time frame, the time thinking was that this would be through by the end of June and then the exemption and regulation wouldn't come into effect, or the whole thing wouldn't come into effect, until the end of the calendar year. So you're safe for the fair.

**Mr Crozier:** I'm safe for the parade. OK.

**The Chair:** Any further debate? Seeing none, I'll put the question on the amendment. All those in favour? Opposed? The amendment carries.

Shall section 1, as amended, carry? Carried.

Section 2:

**Mr Galt:** I move that section 2 of the bill be struck out and the following substituted:

"Commencement

"2. This act comes into force on a day to be named by proclamation of the Lieutenant Governor."

As we were just talking about a few minutes ago, this has to do with the consultations. We decided last Monday that it probably would be a wise idea to meet with various groups. I was struggling with these exemptions, and it's very difficult to come up with something that's agreeable. We were looking at an agricultural one, for example, to be at 60 kilometres, and a lot of people really disagreed with that kind of speed, that it should be less than that, moving from one farm to another with people in the back of a half-ton. So let's have a chat with the people who are really out there in the field, so to speak, and we'll come up with some sort of agreement and bring these forward in the fall.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is carried.

Shall section 2, as amended, carry? Carried.

Section 3:

**Mr Galt:** There's a slight modification here from the original intent. First, I'd better put it forward.

I move that section 3 of the bill be struck out and the following substituted:

"Short title

"3. The short title of this act is the Jay Lawrence and Bart Mackey Memorial Act (Highway Traffic), 2001."

Originally we talked about it being the Jay and Bart clause, but I think it has a little more meaning—it was a suggestion from the ministry—to be a memorial act. I think the parents of both young men would appreciate that.

**The Chair:** Any debate? Seeing none, I'll put the question. All those in favour of that amendment? Opposed? The amendment is carried.

Shall section 3, as amended, carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 33, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

Thank you very much, and congratulations, Mr Galt, on your initiative making another step through the process.

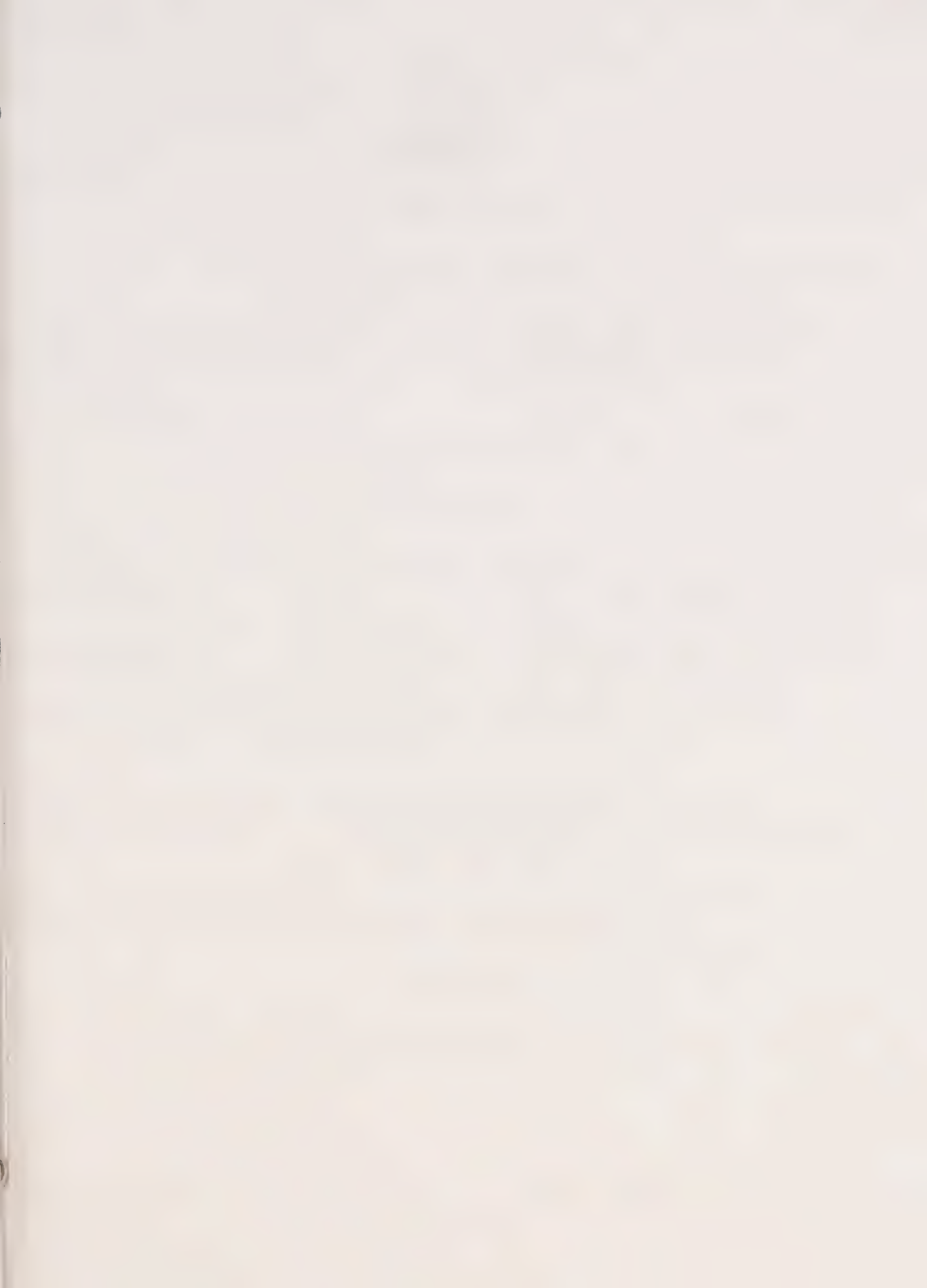
**Mr Galt:** Thank you very much, Chair. Just a procedural question to maybe help me through this a bit, if you're clear on it. I've often seen some of the third readings go through on the last day or evening of the sitting. How is third reading of a bill such as this usually handled? What's my expectation from here?

**The Chair:** I think you would be best to discuss the matter with the House leader, who in turn would speak to her two counterparts in the other two parties. Normally, if it was to be accorded that, you might have time for a brief statement and that would constitute third reading.

I thank all the committee members. With that, the committee stands adjourned until Wednesday at 3:30.

*The committee adjourned at 1646.*





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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 20 June 2001

# Journal des débats (Hansard)

Mercredi 20 juin 2001

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Occupational Health and Safety  
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## Comité permanent des affaires gouvernementales

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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

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GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 20 June 2001

Mercredi 20 juin 2001

*The committee met at 1546 in committee room 1.*OCCUPATIONAL HEALTH AND SAFETY  
AMENDMENT ACT, 2001LOI DE 2001 MODIFIANT  
LA LOI SUR LA SANTÉ  
ET LA SÉCURITÉ AU TRAVAIL

Consideration of Bill 34, An Act to amend the Occupational Health and Safety Act to increase the penalties for contraventions of the Act and regulations /  
Projet de loi 34, Loi modifiant la Loi sur la santé et la sécurité au travail en vue d'augmenter les peines en cas d'infraction aux dispositions de la Loi et des règlements.

ROB ELLIS

**The Vice-Chair (Mr Norm Miller):** I'd like to call this meeting to order. I'm filling in for the Chair until he shows up. He's expected to be about 10 minutes late.

Today we're meeting to consider Bill 34, and we have some people here to speak to the committee today. Rob Ellis, if you would like to speak to the committee, you have 20 minutes. You may use as much time as you want of the 20 minutes and then there will be an opportunity for questions from the various parties afterwards.

**Mr Rob Ellis:** I'd just like to begin by thanking everybody here, particularly Mr Agostino, for the invitation to speak on this very important subject.

I want to introduce myself. My name is Rob Ellis and I'm a business owner in the city of Burlington. I have a family of three children and my wife. It's an important day for me to be able to speak to all of you.

In February 1999, my family lost our oldest son, David, in an industrial accident. He was only 18 years old. It was on the second day of his job that he was killed. He was left alone on the floor of a bakery that he was working at. He was given no supervision and no training and was working on the largest piece of equipment at the bakery, an industrial mixer, which had been inspected 18 months before, and a verbal warning was issued at that time to get guards and a safety lockout system on that mixer. Unfortunately, the warning was ignored by the owners of the company and not followed up by government inspectors. David had very little chance. David had plans to go to university in September.

The owners of the company were found to be negligent and the company was fined \$62,500. One of the supervisors was also fined \$7,500. The other supervisor was sent to jail for 20 days, served on the weekends. What the Ontario taxpayers don't realize is that the fines have actually been subsidized. They won't have to be paid off for another four years. The amount of downtime the company had: one eight-hour shift, and they were back in business.

Your kids would have liked David. He had no enemies. He had an 85% average all the way through high school, athlete of the year in his high school. He loved helping the underprivileged, feeding street kids, single moms and dads in places like Regent Park, east Hamilton—Kenilworth Street—and London.

If Dave were standing here today he would say, "Dad, don't get bitter and don't get angry. Go out and fight for my generation," and that's what I'm doing. Last year there were 16,000 young workers between the ages of 15 and 24 who were injured on the job in Ontario—16,000.

I go out to high schools, universities, colleges and corporations right across the province—corporations such as Weston Group, corporations such as Dofasco, corporations such as Ontario Power Generation. I ask workers to ask more questions of their bosses. I ask parents to talk to their kids about their close calls. I ask business leaders like myself to lead the way and provide more training and safety, recognizing that more training and safety will lead to more productivity and more profitability, always.

There used to be—and I emphasize "used to be"—an underlying feeling within Ontario taxpayers that if we raise the level of safety too high, businesses will go south of the border and fold up and nobody will be able to work. That way of thinking has gone by the wayside, primarily because of the excellent work the environmentalists have done. I know that if I have a spill in my plant, I'll have a jail term to serve or a fine to pay. Our kids now know how to protect our water and our air and our wildlife. Have businesses gone south of the border because of tough environmental laws? No, they have not.

Let's talk about loose truck tires. We don't hear of any more deaths along the 401 any more. Safety legislation brought in by the government was passed in 90 days. Have trucking firms gone south of the border? No they have not.

I've tried to encourage the thousands of people—literally thousands of people—I have talked to in the last

six months. I've spoken 31 times in the last 29 days. I've talked to them and I've tried to encourage them, that Ontario now has a plan in place and that plan includes education, enforcement and personal commitment. All of you sitting in this room have been in that plan in the last 20 years through seat belt safety legislation.

I think you can all recall that when seat belts were brought in 20 years ago nobody wanted to wear them: they were too uncomfortable, they'd drive the cost of cars up too high and, besides that, seat belts won't save lives. Twenty years have passed, and we know that seat belts do save lives.

On the education side, our kids all know that they have to put their seat belt on before they can get their G-1.

On the enforcement side, I always ask parents wherever I speak, "If the police pulled you over today, would you wear a seat belt if you knew the fine was going to be \$1.20, or do you wear a seat belt because you know it's going to cost you \$110 and two demerit points?" I still get adults shaking their heads up and down. They know the enforcement side is very important. I wear a seat belt because of the above reasons, but I wear a seat belt because I'm personally committed to my family. I know seat belts save lives.

On the labour side, we are making good strides. Education-wise, as of last September, all grade 9 and 10 students must take a health and safety course to get their diplomas, and next year it will be grades 11 and 12. And now I've got colleges calling and saying they want it on their curriculum as well.

On the enforcement side, unfortunately most of the response I've got from parents and workers is that we are weak in this area, that we're perhaps 10 years behind groups such as environmentalists and transportation. I know this plan we have in Ontario will succeed, but I am absolutely desperate today, and I will not wait for 20 years to see the fruits of success and to save lives.

Amending section 66 by increasing the ceiling of these penalties—that's just the ceiling—and making directors and officers of corporations liable if they are found to be negligent would send a strong message to all business owners in Ontario. However, this message is no different than the strong message sent out by the Ontario government in the 1990s to all corporate officers, like myself, who would continue to operate above the law of the land with respect to environmental issues. We all know as business operators that if we are operating above the laws of the land and we get caught, there is a fine or we go to jail.

I can only remind you that there were 16,000 young workers injured in Ontario last year. Young workers are the future of Ontario, and that is who this amendment will help protect. We must send a strong message: Ontario cares about its future. Is it worth fighting for? You bet it is. And I'll be on the front line fighting for our future.

**The Chair (Mr Steve Gilchrist):** We have about three minutes per caucus for questioning. We'll start with the Liberals.

**Mr Dominic Agostino (Hamilton East):** First of all, I want to thank Mr Ellis for being here today, of course, but as well for the tremendous service that you have given and continue to give to Ontarians through your work. Personal tragedies devastate, as in your case, your family and yourself, and often it seems the natural thing for people to do is to just sort of get away from everything. You have taken what really was a personal devastation and tragedy and used that as an opportunity to try to ensure that it never happens again to another young person or another person in Ontario. I think you should be commended. All of us owe a great deal of gratitude to you for the work you've done and the commitment you're taking forward.

I just want to ask you about a correlation. You talked about fines, and this legislation would significantly increase fines, but particularly it would increase the aspect of the opportunity. You gave the example of a director of a company that discharges something into the Hamilton Harbour who can go to jail and face a greater fine, penalty and jail term than someone who is neglectful and a person dies on the job. How important do you think that aspect is, that the highest level of corporations, the directors, if they're somehow found to be responsible as part of the neglect, also face the possibility of severe and stiff penalties, of up to \$1 million here and jail terms of up to two years? How important do you think that aspect is as far as sending a message out that it can't just be pushed on the floor, that the direction has to come right from the top down?

**Mr Ellis:** All I can say is that as a business owner myself, I don't think I will ever forget when in the 1990s environmentalists made the change and the directors from a major corporation in Ontario had the possibility of going to jail because of a spill. That major corporation was a shoe manufacturer here in Ontario, and it sent a very clear message to all Ontario owner-operators and directors that if they were found negligent, they had the possibility of going to jail. Not one person, as a director or owner, wishes to spend one day behind bars.

**The Chair:** Mr Kormos?

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**Mr Peter Kormos (Niagara Centre):** Feel free not to respond to this if you're disinclined, but you talked about how the company was fined, another supervisory person was fined as a result of the death of your son and then a third supervisory person, who one has to assume had direct control over the circumstances, got a 20-day sentence that was served on weekends. Again, feel free not to answer, but was that the sentence that was sought? I appreciate that's the sentence that the presiding judge or justice of the peace imposed. Was that the sentence that the prosecutor sought? If not, what was the prosecutor looking for that resulted in the justice of the peace or judge giving but 20 days on weekends? Do you recall?

**Mr Ellis:** I think they felt it was quite a precedent-setting case, that 20 days was a significant number of days behind bars. Do I need any further comment beyond that? Twenty days is a start. Is 20 days enough, served on weekends? I leave that for your judgment.

**Mr Kormos:** I think you can infer what my response is. We support the increased fines, the proposals in this amendment. We consider them laudable. You also made reference to the issue of enforcement. The biggest fines in the world mean zip if we know we can get away with it. You talked about a context of 18 months after a verbal warning—uncorrected. What would you advocate in that regard?

**Mr Ellis:** I think what we're talking about today are two different issues. We are simply talking about ceilings at this point in time. We are not talking about actual fines; we are talking about ceilings. The average fine for a company found negligent in the death of a worker is \$55,000. We're talking about apples and oranges here. At this present time today we are only talking about a ceiling, not the actual fine. That, hopefully, will come in time, when the general public voices their own opinion.

**Mr Kormos:** Thank you, kindly, sir, for coming today.

**Mr Ellis:** Thank you very much for your very good question.

**The Chair:** The government benches?

**Mr Norm Miller (Parry Sound-Muskoka):** First of all, thank you very much for coming in and telling your story so eloquently and with so much emotion.

Coming back to the fine levels, the current fine levels we have right now, the actual fines, are nowhere near the actual levels—

**Mr Ellis:** Not even close, no.

**Mr Miller:** So even if this legislation goes in and bumps up the levels—

**Mr Ellis:** Let me put it in perspective. I have a personal friend who owns a very large winery in Ontario. He was complaining that the government had fined him \$55,000 for a caustic spill he had two years ago. The fine was \$55,000 for three dead fish. The fine for my son's corporation was \$62,500. It shows you what a very good job the environmentalists have done and what a strong message they have sent out.

**Ms Marilyn Mushinski (Scarborough Centre):** Thank you very much, Mr Ellis, for coming in. Along with my colleagues from all sides, I wish to express my sincerest sympathy to you.

I guess my major concern has always been one of judicial accountability, for want of a better phrase. Given that the maximum fines are rarely, if ever, imposed by judges and juries, would you prefer to see minimum floors imposed to try to at least address the apparent inequities in fines that are imposed?

**Mr Ellis:** I think that's a very good question; thank you very much. I have never considered looking at a minimum. How do you equate a minimum amount with the death of a worker? In dollars and cents, there's just no value to that. I think what we are talking about here today is sending a very clear message to business owners like myself that if you wish to operate above the laws of the land and jeopardize the future of Ontario in people—not wildlife, people—then there will be heavy fines and

possible jail sentences. It's the message that we're sending.

**Ms Mushinski:** OK, so given that labour laws of course apply to people and not fish or wildlife, what you're saying is that you want the government to at least equate the importance of maximum penalties, I guess the punishment fitting the crime, in other words. In so doing, have you done an assessment of what, let's say, the maximum fines are under the Ministry of the Environment, for example? Are you suggesting that in actual fact they probably are higher in most instances?

**Mr Ellis:** In my research, I have found they are significantly higher, and environmental groups have lobbied much better than labour groups. We are catching up, slowly.

**The Chair:** Thank you, again, Mr Ellis, for coming before us here today and recounting your story. We appreciate it.

#### TORONTO WORKERS' HEALTH AND SAFETY LEGAL CLINIC

**The Chair:** Our next presentation will be from the Toronto Workers' Health and Safety Legal Clinic. I'm told they would like to share their time with the Toronto Injured Workers Advocacy Group. So, if they could come forward to the witness table, please. Good afternoon. Welcome to the committee.

**Mr Daniel Ublansky:** Thank you. I have copies of the written submission, if I can pass them around.

**The Chair:** The clerk will be pleased to do that for you. Perhaps, as you get started, you'd be kind enough to introduce yourselves for the purposes of Hansard.

**Mr Ublansky:** I'd be happy to do that. My name is Daniel Ublansky. I am the lawyer-director of the Toronto Workers' Health and Safety Legal Clinic. With me are Linda Vannucci, my colleague at the health and safety legal clinic; Patricia O'Reilly from the Injured Workers Consultants; Orlando Buonastella, also from Injured Workers Consultants. We are all employed under the community legal aid clinic system, funded by the Attorney General.

For your information, the Toronto Injured Workers Advocacy Group includes the following members: Injured Workers Consultants, the Industrial Accident Victims Group of Ontario, the Toronto Workers' Health and Safety Legal Clinic, Parkdale Community Legal Services, Rexdale Community Legal Services and West Scarborough Community Legal Services.

The Toronto Workers' Health and Safety Legal Clinic is a community legal aid clinic, as I mentioned, which is funded by Legal Aid Ontario. Our clinic provides information, education and, if necessary, legal representation to low-income, non-union workers in Ontario, and we've been doing that since 1989. Last year, the clinic provided legal advice and representation to approximately 1,000 clients. In addition, we presented workshops on workers' basic rights under the Occupa-

tional Health and Safety Act to over 5,000 recent immigrants.

The workers that our clinic sees are among the most vulnerable in this province. They are employed in low-paying jobs and are exposed to scandalously poor working conditions. Their employers display little interest in or regard for the need to protect workers from hazards in the workplace. If a worker complains about safety conditions, he or she will initially be ignored. If the worker persists, he or she will be harassed and threatened. If the worker hints that he or she might complain about conditions to the Ministry of Labour, he or she will be terminated.

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These vulnerable workers are totally at the mercy of their employers with respect to their health and safety. There is no support system in place to balance against the absolute authority of their employers over working conditions. The internal responsibility system has no relevance to these workplaces. Even if the workplace is large enough to qualify for a health and safety representative or a joint health and safety committee, these do not exist or are totally ineffective.

The only counterbalance to the absolute authority of employers in non-union workplaces is the Ministry of Labour's enforcement system. The non-union employers we deal with will only be motivated to implement basic health and safety improvements if: (1) there is an awareness that there is a real chance that an inspector will visit the workplace and discover the violations that exist; (2) if discovered, there is a real chance that serious violations will be vigorously prosecuted; and (3) if convicted, there is a real chance that they will be heavily fined or possibly sent to jail.

There is no other way to effectively protect Ontario's most vulnerable workers from the dangers that they face on a daily basis in our workplaces.

There will always be a substantial segment of the employer community that will only respond to the deterrent effect of aggressive enforcement and vigorous prosecution. It is no different than dealing with drivers who insist on exceeding the speed limit on our highways. Although the majority of motorists pay attention to posted speed limits, many don't. For that reason, the penalties for violating speed limits have been steadily going up and so has the level of enforcement. No one seems to question the deterrent value of aggressive enforcement and vigorous prosecution in relation to speeding violations.

The same is true with respect to motorists who drink and drive. Considerable amounts of energy and money have been spent on public relations campaigns to raise awareness about the tragedy and suffering created by impaired drivers who get into accidents on our highways. These efforts have led to a shift in society's attitude toward drivers who drink and thereby endanger innocent lives. That shift was achieved only because the public sent out a strong message to drinking drivers that this type of conduct will no longer be tolerated.

It's ironic that when it comes to the area of occupational health and safety, where over 100,000 workers suffer lost-time injuries and 400 are killed annually, there would be anyone who would question the need for heavy fines when grievous violations of the Ontario health and safety act occur. Heavy fines are the public's way of sending a strong message to people that it is not acceptable to kill or main people in the workplace.

This is a government that has been saying since 1995 that its goal is to have Ontario's workplaces among the safest in the world. In addition, the Workplace Safety and Insurance Board has declared a zero tolerance for accidents and disease. These are lofty goals, indeed. We believe that increasing the penalties for violations of the act, together with a commitment to aggressive enforcement and vigorous prosecution, can make a significant contribution to the achievement of these goals.

I just want to depart for a moment from the prepared remarks.

Rob Ellis told you about what happened to his son David. Many of you may know that six or seven months after that accident a second young man was killed in a remarkably similar accident, a young immigrant, or a recent arrival, by the name of Ivan Golyashov. He was killed in October 1999, in the same apparatus David was killed in, approximately seven months later. About 10 months after that, the ministry decided to press charges against the owners of the employer and, I believe, a supervisor as well. The outcome is still pending.

A couple of days ago, after Mr Agostino had called me concerning the possibility of appearing before the committee today—and by the way, thank you for doing that; sorry I neglected to do that earlier—I happened to be reading the latest issue of the Canadian Occupational Health and Safety News, and I came across an item from Hamilton, Ontario, a place called Camel Pizza, where a business director and a supervisor received fines totalling \$110,000 after being found guilty of 12 violations of the Occupational Health and Safety Act in connection with an accident—sorry, it wasn't an accident; it was simply an inspection that revealed exactly the same deficiencies that led to the deaths of these two young lads. This is after an inspection that took place in June 2000, eight or nine months after the second young lad was killed in an accident involving that type of apparatus. The outcome is \$100,000 in fines spread over 12 different charges.

Again, it struck me, in answer to the possible question why do we really need—the fines are already pretty high, and why do we really need to go any higher? What possible use would that be? What benefit would we achieve? To me, when I saw that item, that answered the question for me.

I know people like to engage in numbers games and statistics, and everybody is looking for statistical arguments to back up their argument or their claims, your positions. Presumably, if the Ministry of Labour actually went back to providing us with information on a regular basis, we might be able to do that, but they don't really do that much any more. So it's hard to get hold of those kinds of figures.

Apart from the numbers, for me it's really more about putting an end to needless death and injury. Certainly, in this case it appears as though the message hasn't quite got through yet. For my part, anything that will contribute to getting that message across is worth doing. If increasing the fines has the effect of motivating even one business owner like Rob Ellis to think twice about conditions in his workplace, then to me it's worthwhile.

On my last page I make some comment about what I think would be an improvement to section 32, and that's in relation to the section on directors. While I agree that it's important to hold directors accountable for conditions in the workplaces of the companies they are employed by, we already do have section 32 in the act, which requires directors to take reasonable care to make sure the corporation complies with the act. Unfortunately, the Ministry of Labour has never actually, to my knowledge, laid a prosecution under that section, except in cases where there were situations of authorization, permission or acquiescence. So the section in Bill 34 codifies the status quo and perhaps discourages the possibility that the act will be used in a more flexible and effective way to make directors, again, as I said before, think twice about what's going on in their workplace. In my view, if you can only be prosecuted for permitting, authorizing or acquiescing, then in a sense you're creating a disincentive for directors to become proactive. If they do become proactive, then there is a chance that they can be prosecuted. If you leave it as section 32, then it encourages proactivity. That's just a suggestion.

That's the extent of my prepared remarks. I'm available for any questions in whatever time is left.

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**The Chair:** Thank you. We've got a couple minutes per caucus. We'll start this round with Mr Kormos.

**Mr Kormos:** Thank you very much, folks. Robyn Lafleur was a young woman down from where I come from, crushed by a burning beam at the Esquire factory in Port Robinson. The plant, the corporate entity and several individuals were charged with page after page of information bringing charges under the Explosives Act—federal charges—and the Occupational Health and Safety Act. In the House a couple of weeks ago, I asked a question, because the prosecutors, provincial and federal, were cutting a deal, where all the charges against the individuals were going to be pulled, in exchange for a plea of guilty by the company. But, you see, the company is American that has no real presence in Canada. All the fines in the world will mean squat in that regard.

What's your experience? We're going to be discussing this whole business of fines and how we get at some of these fines, some of these notoriously low fines. I've got some ideas about how we get there. It isn't just the judges and the JPs. What's going on? Why would the Ministry of Labour be wanting to pull charges, to cut a deal? The family says, "We don't care if they're acquitted on some technicality. Let us have our day in court." Do you guys know what's going on? The Attorney General doesn't seem to.

**Mr Ublansky:** I can't say that I have any particular wisdom on that. Certainly it has been our experience over the years that quite frequently the cases that attempt to draw higher fines tend to be cases where there's no one there actually to get the money from or to extract the money from. The ministry will release the information about a heavy fine having been issued, but the reality is that the fine is never collected.

**Mr Kormos:** The company is bankrupt or delisted or whatever it is.

**Mr Ublansky:** Yes. I guess one does have to question the wisdom of why those are the cases that are being pursued, as opposed to perhaps some of the others. Let's put it this way: there's no shortage of opportunity to find candidates for prosecution, candidates who are here and who will be here and who aren't going anywhere.

**Mr Kormos:** My counterparts here, I anticipate, will be voting for the government's Bill 57, which eliminates the requirement that there be compulsory as-of-right workplace inspections by Ministry of Labour inspectors when there's a refusal to work unsafe work. Notwithstanding that the workplace inspectors have been reduced from 278 down to a mere 200 and those 78 haven't been replaced, what's your view of legislation that would eliminate the as-of-right obligation, requirement, that an inspector go to a site?

**Mr Ublansky:** I'm very fearful. Again, speaking on behalf of the workers that we see, in a non-union environment, the thought that an inspector would somehow deal with a work refusal situation without actually being there boggles my mind. It's unthinkable. It's unthinkable to even contemplate that possibility that this one, lone, non-union worker is going to take on the strength and the power of his employer and have virtually nobody there for support. As I mentioned in my prepared remarks, that's already the case in that situation to begin with. Then to say that you can't even draw upon the resources of the Ministry of Labour for some help and some support is just unthinkable.

**Ms Mushinski:** I really have just one question, and it's with respect to your comments about section 32. I believe you indicated, Mr Ublansky, that to your knowledge there had not been any convictions or charges.

**Mr Ublansky:** As far as I know—there has never been any conviction for sure. I suppose if there had been a charge and an acquittal, I might not know that, because most of the publicity surrounds convictions. But as far as I know, there has never been a charge under section 32 in relation to failure to ensure compliance with the act. Whatever charges there have been, have been connected to a hands-on involvement by the director.

What I'm concerned about is taking the directors off the hook. I think if you're a director of the company, you ought to have a proactive attitude about what's happening in the workplace in that corporation and you ought to make it your business to be sure that health and safety rules are being complied with in that workplace; and if you don't do that, then you should be held accountable. That's my point.

**Ms Mushinski:** The reason I asked the question was because it's my understanding that 174 charges have been laid and there have been 19 convictions since 1995.

**Mr Ublansky:** Under section 32?

**Ms Mushinski:** Under section 32.

**Mr Ublansky:** Again, I could be wrong, but my guess is that if you were to look at those 19 convictions, you would find that in every case the director was physically on-site and was physically implicated in the offence or the violation that occurred. There has never been a case where a director was charged and convicted simply because he didn't take a proactive attitude and make sure that things were being done correctly. That's what I think needs to be encouraged.

**Mr Agostino:** First of all, thank you for the presentation today. The concern we have talked about was just addressed now. I guess we left it as it was in the bill was on the advice of legal counsel, who felt that it would be more likely to get more prosecutions. I understand the other one is more open-ended, but legal counsel's advice was that it would be much more difficult to get a conviction under that section than under the—and if we could combine both, it would have been ideal. So that sort of addresses part of that.

I want to go back to the point of the fines again. This bill primarily deals with increasing fines and increasing penalties and jail terms. That's only one part of the puzzle, obviously; there's going to be a lot more to it that has to be done with education and training and so on.

**Mr Ublansky:** Absolutely.

**Mr Agostino:** From your point of view, how important is the fact that the fines are heavier and the jail terms are longer as a deterrent to make sure that employers ensure that they provide a safe workplace and a safe working environment for women and men who are employed with them?

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**Mr Ublansky:** I can only fall back on the remarks of Rob Ellis, because I've never operated a business; he has. He just told us 10 minutes ago that he was directly motivated and affected by the penalties that are associated with the Environmental Protection Act.

I think that's true. I've had others tell me that. I believe that to be the case, particularly in the situations that we come up against. Most of the situations that we deal with are employers like Rob Ellis. They're small, and there is a personal liability attached to that. It is not a distant relationship. They can be influenced by, what I was saying before, the real chance that they could be dragged into court, they could be charged, they could be convicted and they could end up in jail. That has a real impact on small employers. Again, I've been doing this for 25 years. People have been searching for all that period for the solution to, how do we motivate small employers? With all due respect, I think that's the best way. It may not be the way we would like, but it works.

**The Chair:** Thank you very much, Mr Ublansky, and your colleagues, for coming before us here today.

With that, we will move into clause-by-clause consideration of Bill 34.

**Mr Agostino:** Can I have just a couple of minutes to explain the intent to the committee, what the bill does, and then we can go into that. We have one amendment, as well, that we'd like to present.

**The Chair:** Feel free.

**Mr Kormos:** Further to that, I'm wondering if Mr Agostino could address, unless that is his intention, the comments made about what is director liability.

**Mr Agostino:** First of all, I want to thank the committee for taking the time and interest here today. It is, for me, a very significant piece of legislation from the point of view of what we need to do. We heard some examples today of some of the impact that workplace injuries and deaths have had on people's lives. I think we all have friends, family, relatives or neighbours who we can relate to from those types of experiences and tragedies that have occurred in the workplace. Regardless of arguments about the statistics, the numbers and the fines, whether convictions have gone up or down or whether the number of deaths has gone up or down and so on, I think we all would agree that if this type of legislation prevents one death in the workplace, then it is well worth bringing into force here.

I think it affects particularly young people. It is a tragedy when anyone dies on the job, when anyone gets injured on the job, but when you're talking about 17-, 18-, 19- and 20-year-olds, at a time when they're just starting their lives, it hits all of us a lot harder.

There was another incident in Cambridge three days ago. We don't know—the investigation is just underway. A 19-year-old young man was killed; he got pinned between a forklift and a truck. These examples we see every single day. Often it is a question of neglect. Often they happen because there is neglect.

When my own father was injured on the job and ended up in a wheelchair, it was simply as a result of neglect, because it was a small employer, non-unionized. All it would have taken was \$2 or \$3 to put up a little wooden railing around an elevator shaft and that accident would not have occurred. There was never a charge laid. There was never an investigation into that. My father and my family, as did thousands of other Ontario families, suffered the consequences of that. He spent the last 23 years of his life in a wheelchair. His death to some degree was contributed to by his accident and implications from the accident as well. Clearly, there's one other small example of the types of things that have happened in Ontario.

I really believe that this will go a long way to help. It has got to be part of a bigger package. We've got to be more aggressive in enforcement. We've got to be more aggressive. Prosecutors have to be more aggressive in seeking bigger fines and longer jail sentences in these types of things. Again, if you look at it—and Mr Ellis gave a good example—as important as environmental protection is, and we all agree and we all support that type of legislation, there's something out of whack here where fines and penalties for environmental accidents are greater than fines and penalties for accidents that occur to

people, or at least on a par. There's something fundamentally wrong. Not, of course, that one is less important to do, but when you look at it in human tragedy, in human loss, one has to draw a conclusion that it is at least equally important from the point of view of legislation.

I would hope that we support this today with one amendment simply to change the name of the bill. To some degree, I think that would pay respect to Dave Ellis and a tribute to the work that his father has done in this.

Just to quickly address the issue Mr Kormos and I talked about earlier, we had the discussion with Dan and other folks regarding that part of the bill. It was the advice of legal counsel that it was more enforceable and possibly easier to get a conviction if the charge came in the more specific rather than the open-ended section 32 that is now there. That's why it was done that way. We did check with legal counsel early this afternoon again to try to see if they would give us what they felt was better on that. Their advice was that it would be more likely to get a charge and a conviction when it's as it is in the bill rather than as it was in section 32.

**Mr Kormos:** If I could just respond to that, I would have this question, because I recognize the distinction of this amendment to the original section or the section that it—reasonable care to ensure compliance. Why would the two sections not be included? In other words, why would you delete the other section? My submission is that the presenters are correct when they say that one is more encompassing but they can address two very different things. I ask you, Mr Agostino, would you then consider an amendment that would merely add this as a section? That way there'd be choice on the part of an investigator prosecutor.

**Mr Agostino:** I'm comfortable with that. I would simply add that to remove the one and add the other one would give some flexibility.

**Mr Kormos:** I wonder if legislative counsel could—I don't believe there'd be any nullification one of the other if they were merely added. The Criminal Code has many sections which are very similar and come close to overlapping, but that doesn't prevent them from coexisting. You may be in trouble if you charge both, right?

**The Chair:** Perhaps we can get legislative counsel's opinion on that matter, Mr Kormos.

**Ms Cornelia Schuh:** I didn't quite follow what provisions you were talking about keeping rather than replacing. Can you explain it for the slow-witted.

**Mr Miller:** I believe it is section 32.

**Ms Schuh:** Which isn't being touched in the bill.

**Mr Kormos:** There's no repeal of any of the existing act, correct?

**Ms Schuh:** No.

**Mr Kormos:** There's no repeal of any of the offence sections?

**Ms Schuh:** No, this doesn't affect section 32 or any other substantive section that would create an obligation.

**Mr Kormos:** OK. So this amendment does have two offences coexisting in the same statute?

**Ms Schuh:** Yes.

**Mr Kormos:** Problem solved, right? No issue. My apologies. Good. I feel much better now.

**The Chair:** It's always a goal of mine, Mr Kormos, for you to feel better.

**Mr Kormos:** I'm sure it is.

**The Chair:** Are there any other comments, Mr Miller?

**Mr Miller:** Just on the same point, Mr Ublansky felt that somehow this was going to penalize companies that were proactive toward trying to have a better occupational health and safety record. I'm just wondering about clarification on that point.

**Mr Agostino:** That section stays as it is. This is an amendment to that. It would not affect what's in there already, which is what legal counsel has advised us.

**The Chair:** If there are no other general comments, perhaps I can move into section 1. Your comments of course are always still in order as we move through there. I'll ask, are there any comments or amendments to section 1 of the act?

**Mr Kormos:** I support section 1. Very quickly, the issue of maximum fines is very relevant, firstly, from the fact that, as I understand the principles applied in sentencing, people never get the maximum fine. Break and enter into a dwelling, for instance, under the Criminal Code has a life imprisonment penalty. It is one of the most serious offences in the Criminal Code. But I defy anybody to point out somebody charged or convicted of break and enter who's gotten a life sentence, because, as I understand it, the principle that the courts apply is that of the worst offence by the worst offender, and in the case of break and enter into a dwelling, there may well be some judicial regard for the fact that at the end of the day maybe life in prison is just excessive in view of the fact that you get life in prison, in theory, for murdering somebody.

1640

It seems to me that it's important to raise these fines, because then you raise the bar across the board. You give JPs or judges more leeway to give heavier fines, because they're not bound by the lower range of that maximum fine. That's number one.

Number two, we've heard some reference, and this isn't germane at this point to the bill, but it is certainly germane to what Mr Agostino purports to address: I've had great concern about provincial prosecutors who prosecute these things, either for the Ministry of Labour or provincial prosecutors in local provincial prosecutors' offices, or special prosecutors from any number of ministries, depending upon where it's coming from, with the type of workloads that they have—which results in what appears sometimes to many of us their eagerness to plea bargain—and the fact that there is no Victims' Bill of Rights in terms of there not being an effective one, and there isn't. The courts have said that vis-à-vis let's say criminal offences. There's certainly none with respect to provincial offences.

I suspect that if these folks were back up here at the table rather than just sitting in the audience, they could

tell us time and time again about how frustrating it is for families of victims, for victims themselves, to have some active participation in the prosecution, in terms of being consulted, even. It's incredibly painful.

I've talked to the House about the Robyn Lafleur case, which has yet to come up in court again. I talked about the Jeffrey Fleeton case out of Burlington, a 17-year-old boy who was struck dead while he was doing his summer job for his dad, who owns a surveying firm. He had the orange vest on. The Highway Traffic Act charge against the trucking company was going to be withdrawn. Again, that family continues to call me after I raised that matter in the Legislature in question period, saying, "We're still not getting any contact with the prosecutor. We aren't being told whether the deal's going to be cut, whether they're going to prosecute. Never mind being consulted and asked our opinion; we're not being told."

I have to caution them and I say, "Look, sometimes prosecutors make deals because they're afraid they won't get a conviction otherwise. You know, the evidence may not be as strong as it should be." And to the final one, these victims and their families say, "Look, if at the end of the day a judge or a justice of the peace says 'Not guilty,' God bless, but don't just pull the charge." Do you know what I'm saying? "If in fact the law is such, or the evidence is such that a judge or a JP has to find accused A, B or C not guilty, fine, so be it. But, we want our day in court. We want our loved one's day in court," in the case of a deceased person, "We want to be able to tell our story. We want to hear from accused A, B, C, we want to hear what they've got to say about the case, too, what they've got to say in defence of themselves."

That's one of the real problems here, that admittedly this bill is not going to address. Raising the fine is a very positive thing, because it gives sentencing JPs and judges more leeway.

I also want to say this: I've been looking very carefully at the recent announcements of appointments of justices of the peace. While there had been, during a period of time, some real depoliticization of that process, I find more and more familiar names, some of them friends of mine, quite frankly, among people being appointed as justices of the peace. That's not to say that patronage with merit is in and of itself a bad thing. As I say, some the personalities who have been appointed, because it's JPs hearing most of this stuff—

*Interjection.*

**Mr Kormos:** Yes, provincial offences, provincial offences courts. Yes, Mr Miller, justices of the peace. In some cases they'll refer the matter over to the presiding provincial court judge, and this is where you get some big differences, too. A provincial court judge who does criminal work day in and day out has a far better handle on what appropriate sentences should be, let's say in the case of a death, because here is a judge who has in his or her experience given people five years, 10 years, 15 years. So the prospect of giving somebody an 18-month sentence doesn't rattle them to the core, you know, where they're shaking because they've never sentenced. It's

tough for a judge. It is tough for judges, I think, to send people to jail in almost every instance, but they aren't rattled to the core and saying, "Oh my goodness, I've never taken away somebody's liberty for six months before."

But most of the cases are handled by JPs. Some of them are very, very good. Some of them don't have the experience that they should have. Some don't have the resources, the training, the backup, the familiarity, quite frankly.

Patronage with competition and merit I think we all live with; that's the name of the game. But patronage without merit becomes dangerous, because one of the problems that may occur from time to time is that people who are called upon to deal with these types of cases cannot, notwithstanding their best efforts, turn themselves into real neutrals. If they maintain some ideological bias toward let's say companies or corporate operators to say, "Well, Jeez, you know, we can't inhibit the company from making profits; we don't want to go too far," if that bias remains, it will be unspoken. No judge or JP should have that bias, and if a judge or a JP does have a bias, he ain't going to talk about it. Nobody said they were stupid, right? They don't have that on their foreheads. It's just that inclination or that bent, and that's a real problem. I'm going to wrap up very shortly, Chair.

I'm also worried about the climate in which we protest these low penalties. We've got Bill 57 in the Legislature, time allocation being debated now. This is a Red Tape Commission bill. The Red Tape Commission has made recommendations, as we're told, that deal with a whole number of regulations and standards, and now increasingly standards that apply to workers in their workplaces that are considered red tape; these are nuisances. That's why Mr Ellis was brilliant to come here as a business person, as an employer, knowing full well of what he speaks.

As long as we regard these regulations and onerous standards—and they should be onerous—as mere red tape to be cut, mere red tape to sic Mr Sheehan on to, we're creating a milieu, a climate, wherein sentencing judges and justices of the peace are getting a green light to say, "Well, you know, a young man died in the dough mixer, as in the case of young Mr Ellis, and then another one eight months later. We can't make it so tough on business that they can't operate, where everybody loses, some risk in the workplace."

I don't believe in workplace accidents. I don't believe there's such a thing as a workplace accident. I got some of your folks really irate in the Legislature the other day when I talked about how I know the guys, the old men—you go to the mall, to Tim Hortons—I know which ones worked in the foundry, because they're the ones with the fingers missing and the other ones wearing the hearing aids at 55, not 65. I can tell which ones worked in Union Carbide, because they're the ones who are constantly coughing and spitting into their handkerchiefs between sips of coffee, they are. You can go to a concentration of

them—Hamilton is the same way—you can almost go there and pick the old women and men and know where every one of them worked. You know, that one worked with Dofasco. You can do that. There are no workplace accidents. I don't believe that.

I'm torn between contrary advice, one the mere addition of the offence of directors or officers and its co-existence with the other section. I appreciate the arguments being made that that will make the other section, the more onerous and difficult-to-prove section, ill-used then. That's a matter of ensuring that there are resources and commitment. Having said that, Chair, people are understanding quite clearly.

Mr Ellis expressed concern. He didn't express concern about the environmentalists having done a good job; he expressed a concern that maybe labour hadn't done quite as good a job as the environmentalists. I didn't have a chance to because of the time, and I regret that he's not here, but I disagree with him. It's not for want of trying, it's not for lack of trying, because it seems to me that environmental issues perhaps don't have the right-wing/left-wing boundary that labour issues do.

I dare say Sid Ryan and paramedics and CUPE workers and OPSEU workers and the auto workers and steelworkers and a whole lot of others may have to shut down workplaces. They've guaranteed—the health and safety and the right to refuse unsafe work—there will be wildcats. There won't be announcements; there won't be ads in the paper weeks in advance. I've been proud to be with a couple of groups of wildcat workers with great courage, who simply say, "Shut her down, guys," and down she goes. That's going to be their response to Bill 57, because these people are fighting for their lives. They're fighting for their sisters' and brothers' lives. They are, literally; they're fighting for their lives.

1650

I was accused of using silly statistics. The Minister of Labour accused me of using silly statistics today in the Legislature when I talked about how in 1999 workplace deaths had risen to 200 and by the year 2000 they had risen to 243 women and men here in the province. The Minister of Labour said, "Oh, Kormos is just using silly statistics." Two hundred deaths and then 243 deaths of women and men working in their workplaces—silly? Mere statistics? Not by a long shot.

**The Chair:** Any other comments or amendments to section 1?

**Mr Garfield Dunlop (Simcoe North):** Just a question to Mr Agostino. I didn't bring your private member's bill with me today, but I was curious about some of the research you may know about—or maybe you haven't done this research. In other jurisdictions where they have raised the fines—and I'm not sure if they actually have raised the fines in other jurisdictions, in US states—have the courts followed accordingly, do you know? Because I know that we haven't reached the maximum fines here and it has been clearly mentioned here today.

**Mr Agostino:** From what I have seen, there's not a lot of information available on that correlation. I think we've

seen in other areas—or here, for example—if the maximum is a year on something and they're giving 20 days and they use that as a parameter, you would think the logic would follow that if the maximum is two years, the least the judge would do is double that. Again, I don't have the statistical evidence to suggest that.

I see it really as a deterrent. We hope this leads in many ways to fewer convictions and fewer charges because there are fewer accidents. That's ultimately what we'd like to see as the result of all this. We would take no great pride in saying, "Gee whiz, we've convicted 100 more people and we've got 100 accidents in Ontario." That's not what this is about. This is not about more convictions, but about preventing accidents.

I would think if you follow the logic in many other aspects of law where the fines tend to become more of a deterrent, hopefully judges, and I think a lot of them will have to, with the aggressiveness of the prosecutors, will see how serious—it's like drinking and driving. That's a perfect example. You saw a pattern a few years ago where the kinds of sentences they were giving were nowhere as severe as they are today. We would argue among ourselves that it is not severe enough. But finally judges, prosecutors and the public are starting to see that killing someone with your car because you're drunk maybe should be treated no differently than pulling out a handgun and shooting someone. That kind of attitude is starting a change to get us there. I hope the same thing will happen here.

**The Chair:** Any further comments? Seeing none, I'll put the question.

All those in favour of section 1? Opposed? Section 1 is carried.

Section 2: Any comments or amendments?

**Mr Agostino:** Just a point on that, in correlation to that: the largest fine ever issued in Ontario to a corporation was done recently, about a year or a year and a half ago, as a result of the deaths of two men who had gone inside a tank to clean it at Dofasco. Dofasco and the subcontractor were both fined a total of \$500,000. That's based on the curve, which is half of what the maximum would have been, or if you do it individually, the maximum could have been \$1 million on the current fine. So that gives you an example, again, of a correlation between the sentence they're giving and the actual maximum due under law.

**The Chair:** Further comments on section 2? Seeing none, I'll put the question.

All those in favour of section 2? Opposed. Section 2 is carried.

Section 3: Any comments or amendments?

**Mr Dave Levac (Brant):** I have a motion on section 3.

I move that section 3 of the bill be struck out and the following substituted:

"Short title

"3. The short title of this act is the Dave Ellis Memorial Occupational Health and Safety Amendment Act, 2001."

**The Chair:** Any comments?

**Mr Levac:** I have a short comment. I did check with Mr Ellis, and he appreciated the gesture and thought it was a noble thing for us to do. Mr Ellis has shared with us his story. Tragic as it is, Mr Ellis has moved forward and made presentations to small business, large business, corporations and schools. So he's taken this on as a task that he felt personally responsible for. Not only will this give memory to David, it will also encourage and support Mr Ellis's tasks ahead of him, because he told me that he continues to fight today and will continue to fight tomorrow. So I think it would be an appropriate gesture on our part, as a committee and hopefully as a Legislature, to pass this amendment.

**Mr Agostino:** Just to add to that, I think we've established a bit of a pattern here, when we use it. When we change legislation as a result of what we see, we use the names of the bills to pay tribute to those individuals who have sacrificed so much—in this case, Mr Dave Ellis and his life—as a result of the workplace. This would be a great opportunity to honour that and to pay tribute to the work that his father has continued to do.

He's also done a great deal of work with the ministry. He's done some work with the Ministry of Labour on the public relations education campaign with WSIB. A great part of his message goes to business, which is really important, to come from the spectrum of small business. Tomorrow he's speaking to the Rotary Club in Hamilton at lunch, as an example. So those are the kinds of ongoing activities. This bill will help us to remind Mr Ellis that we all remember his son and that we do, in one small token way here, pay tribute to the work he has done and to the sacrifice of his son.

**Ms Mushinski:** I don't have any specific difficulty with words like "Dave Ellis Memorial" being used. Perhaps the only concern I have—and it's perhaps more amusing than anything—is that it may not be seen as an actual amendment to the Occupational Health and Safety Act. I'm just—

**Mr Kormos:** Call the question.

**Ms Mushinski:** OK.

**Mr Ted Chudleigh (Halton):** My only comment would be that I'm not all that aware of all the various times when people have been killed or died in the way of industrial accidents. I understand from the statistics given to us that it's quite substantial. Along with everyone else, I would be more than happy to do whatever we could to try and limit those accidents. But I'm not aware whether the Dave Ellis situation, as grievous as it is, is indeed the most grievous. Is it the best known in Ontario? If we call this the "Dave Ellis Memorial," what does it do to all the other people in Ontario who have lost sons and daughters and husbands and wives and grandfathers? Does it lessen their sacrifice? Does it lessen their problem? I don't know about that. I just wonder, is this particular case an extremely well known one in Ontario or are there others that are equally well known?

**Ms Mushinski:** Is it as well known as Peter Kormos?

**The Chair:** Mr Levac, yours to respond.

**Interjection:** We may as well have this discussion right now.

**Mr Levac:** I would suggest that the gesture is based on my respect for the bills that have been put before us in the House previously: Sergeant Rick McDonald, Christopher's Law etc. This is one small token to a person who has dedicated their life to improve the circumstances for workers across the province. Obviously—and I would say that strongly—this would never be interpreted as a slight to anyone else who has lost a child or a young one.

**Mr Chudleigh:** Would it be seen that way across Ontario, in your opinion?

**Mr Levac:** In my opinion, no.

**Mr Chudleigh:** Good. OK.

**The Chair:** Any further comments? Seeing none, I'll put the question. All those in favour of the amendment? The amendment is carried.

Shall section 3, as amended, carry? Section 3, as amended, is carried.

Shall the title of the bill carry?

1700

**Mr Kormos:** Once again, I indicate our support for the bill and our gratitude for the people who came forward to address it and so many others who have sought this amendment.

The last little round of conversation was interesting. That's probably very much the point. One of the things I've noticed is that prosecutors from the Ministry of Labour, when prosecuting these, have relatively few tools and resources at their disposal.

Very quickly, there have been massive changes in the attitudes of the courts about domestic violence, for instance. That was initiated by women's groups, advocacy groups for women, just as now, workers' advocates, be it injured workers' groups, legal clinic advocates for injured workers or the injured workers and their leadership that we all know so well—at least some of us—from being out there with them when they demonstrate here at Queen's Park regularly.

In the case of violence against women, it came with the Attorney General telling crown attorneys that they're going to get special training in prosecuting domestic violence; that they're going to have more tools available to them, in other words, they're going to get data that is sufficient and adequate in its nature that it constitutes evidence a judge can consider upon sentencing, things like the frequency of the matter—and this is admissible evidence on sentencing; that they're going to be having more staff and resources to work closer with the victims, so you have victim impact statements. Then judges began to get educated. A whole lot of good judges simply didn't have any familiarity with all the dynamics of domestic violence, or JPs in terms of bail hearings. I refer you to the recent series of articles in the Toronto Star about Ms Hadley.

What's important is that the Ministry of Labour and the Ministry of the Attorney General get serious about law and order; that in the case of workplace health and safety, this legislature not weaken the existing law—that's what's happening with Bill 57, the law is being

weakened; that the Minister of Labour and the Attorney General—and again I made cursory note of the business plan and didn't see this highlighted anywhere today—ensure that there are resources available so that the Ministry of Labour prosecutors, as well as investigators, have the resources they need to fully investigate a case, to fully prosecute it; that they have the resources to ensure that victims are intimately involved in decision-making during the course of the prosecution; that they've got the witnesses and the evidence to call after conviction so that higher and higher sentences can be sought; and there has got to be zero tolerance in plea bargaining.

That's what happened, among other things, in domestic violence against women. That was a good thing, because I'll tell you what was happening—and you know what was happening: women were getting the daylights beat of them but, because of their economic situation, they ended up moving back in with whatever their counterpart was, spouse or what have you, and then going to court and telling crown attorneys, "Oh no, I don't want to prosecute the charge any more." These women weren't doing this of their own volition; it became a matter of necessity. It wasn't until you had centres where women could go, shelters, that women could be free of the influence, and you had crown attorneys saying, "No, our instructions are that we prosecute. If there's evidence, we prosecute," other than in the rarest and most extreme circumstances, even when the victim doesn't want to prosecute any more. They understand the peculiar dynamics around violence against women.

I haven't heard from the minister, or the Attorney General, a position of zero tolerance in plea bargaining; that we're going to do full investigations, that we're going to lay every charge conceivable, I don't care how minor. I mean, if there's a piece of litter that's on a piece of concrete in that plant where a workplace injury occurred, you will charge them with the whole works. Don't, as is usually done in shotgunning charges, lay a whole whack so that defence council can agree to plea to a couple. My friends over here know what I mean. They've always worked on this side of the legal fence but they know the procedure. Have an attitude of zero tolerance and have prosecutors demand—educate judges and justices of the peace in the course of it. It can be done.

Unfortunately, I don't believe it is being done. My experience with these cases—and my experience tends to be from the victim's side, as I suggest it probably is with more than a couple of others here—is that that isn't the way these prosecutions are happening. The public support for that is genuine; the workers' support for it is profound. It's simply, in my view, just a matter of political will and telling that damned Red Tape Commission to mind its own business and let workers' rights prevail.

**Mr Agostino:** Very quickly, since we're going to wrap up on this, I just want to thank the committee for the support on the bill and certainly I would hope that—

*Interjection.*

**Mr Kormos:** I spoke for five minutes.

**Mr Agostino:** —we will carry it through to the next step. I'll bring it up for final reading. I know that often a lot of private members' bills don't get to that final stage, but I urge and beg this committee, if you don't see fit to put this bill through—

**Ms Mushinski:** Mr Chairman, that is a quorum call. I am on House duty—

**Mr Agostino:** It's over now.

**The Chair:** Ms Mushinski, it's already over. Thank you.

**Mr Agostino:** Just to wrap it up, I want to plead to the government members that this is really important, I believe. It's important to saving lives and injuries in Ontario. If you don't see fit, because it's an opposition bill, please feel free to bring in your own similar bill very quickly. I will support it, I won't take a credit for it, but let's please get it done. This is too important, I believe, to play partisan politics, and I appreciate the non-partisan nature of the committee today on this issue.

**The Chair:** I will pose the question again.

Shall the title of the bill carry? The title of the bill is carried.

Shall Bill 34, as amended, carry? Bill 34, as amended, is carried.

Shall I report the bill, as amended, to the House? Carried.

Thank you very much. I will do that tomorrow. Congratulations, Mr Agostino.

With that, the committee stands adjourned.

*The committee adjourned at 1707.*





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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 25 June 2001

# Journal des débats (Hansard)

Lundi 25 juin 2001

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Monday 25 June 2001

*The committee met at 1554 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Steve Gilchrist):** I call the standing committee to order. The first order of business will be to receive the subcommittee report. Mr Levac, could I impose upon you to read that into the record, please.

**Mr Dave Levac (Brant):** Certainly. It's not an imposition, Mr Chairman.

Your subcommittee met on Wednesday, June 20, 2001, to consider the method of proceeding on Bill 27, An Act to protect the families of police officers and others involved in the criminal justice system, and recommends the following:

(1) That the committee meet on Monday, June 25, 2001, to hold public hearings on Bill 27, An Act to protect the families of police officers and others involved in the criminal justice system;

(2) That clause-by-clause consideration of the bill be undertaken on Monday, June 25, 2001;

(3) That an advertisement be placed on the OntParl channel and the Legislative Assembly Web site and a press release be distributed to English and French papers across the province. The clerk of the committee is authorized to place the ads immediately;

(4) That the office of Mr Levac, Brant, provide the clerk of the committee with a list of witnesses to be scheduled for public hearings;

(5) That the deadline for written submissions be Monday, June 25, 2001, at 5:30 pm;

(6) That witnesses be given a deadline of Friday, June 22, 2001, at 5:00 pm to request to appear before the committee;

(7) That the time allotted to individual witnesses for each presentation, on consultation of the clerk with the Chair, be determined by dividing the available time by the number of witnesses;

(8) That, should a witness make a request prior to appearing before the committee for reimbursement for travel expenses, the committee authorize reasonable travel and meal expenses for witnesses travelling from outside the greater Toronto area based on mileage at the government rate, or economy airfare or reserved-seating train fare to be provided on submission of receipts or a statement of mileage travelled;

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Lundi 25 juin 2001

(9) That the clerk of the committee, in consultation with the Chair, be authorized prior to the passage of the report of the subcommittee, to commence making any preliminary arrangements necessary to facilitate the committee's proceedings.

**The Chair:** Can you move the adoption?

**Mr Levac:** I move adoption of the subcommittee report.

**The Chair:** Any debate? Seeing none, all those in favour of the adoption of the report? Opposed, if any? It is carried.

Just before we call upon our first presenter, I must apologize to my colleagues, but I'm scheduled to be in two places at the same time. In the absence of our normal Vice-Chair, we have to elect an acting Chair. I call for nominations.

**Mr Garfield Dunlop (Simcoe North):** I'll nominate Ms Mushinski.

**The Chair:** Any further nominations?

**Mr Levac:** Seconded.

**The Chair:** All those in favour? Carried.

PROTECTING THE PRIVACY  
OF CRIMINAL JUSTICE  
PERSONNEL ACT, 2001LOI DE 2001 SUR LA PROTECTION DE  
LA VIE PRIVÉE DU PERSONNEL  
DU SYSTÈME DE JUSTICE CRIMINELLE

Consideration of Bill 27, An Act to protect the families of police officers and others involved in the criminal justice system / Projet de loi 27, Loi visant à protéger les familles des agents de police et d'autres personnes oeuvrant dans le système de justice criminelle.

## POLICE ASSOCIATION OF ONTARIO

**The Chair:** As I pass over the chair, I will also welcome our first presenter, Mr Miller from the Police Association of Ontario. Just a reminder, you have 10 minutes for your presentation, and thank you for your forbearance.

**Mr Bruce Miller:** I'd like to start by thanking the Chair and the members of the committee for the opportunity to be here this afternoon. My name is Bruce Miller, and I'm the administrator of the Police Association of Ontario. I was a 22-year veteran with the London

Police Service until I became administrator last December. I have worked in uniform patrol, vice, break-and-enter and the major crime squads. I will try and give you the perspective of front-line police personnel in Ontario.

The Police Association of Ontario, the PAO, was founded in 1933. The PAO is the official voice and representative body for Ontario's front-line police personnel and provides representation, resource and support for Ontario's 68 municipal police associations. Our membership is comprised of approximately 13,000 police and civilian members of municipal police services.

The Police Association of Ontario promotes the mutual interests of Ontario's front-line municipal police personnel in order to uphold the honour of the police profession and elevate the standards of police services.

Protecting the privacy of the personal information of police personnel is an extremely important issue to our members and their families. Our members risk their lives on a daily basis to ensure safe communities in Ontario. They should not be expected to face those same risks at home, nor should their families.

Recently a disturbing trend has developed where police personnel are being targeted. Officers have had personal property damaged and they have been subjected to threats and intimidation.

Criminals all too frequently drive through police station parking lots and record licence numbers of officers' personal vehicles. The registration information can then be obtained for a small fee.

These intimidation tactics have not been limited only to police. One only needs to look at some of the recent experiences in Quebec, where corrections officers were murdered and Michel Auger, a well-known journalist, was shot and critically injured.

The criminal's message is straightforward: "Leave us alone or else." Our message is equally frank: "Our members will not be intimidated."

Having said that, we need to look at ways to protect police and other justice personnel. We support the intent of Bill 27 and would like to take this opportunity to thank Mr Levac for bringing this matter forward. Any attempt to intimidate those tasked with preserving community safety strikes at the very fabric of Canadian society.

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We are concerned about the creation of a legislated committee. We believe this matter should be dealt with at a stakeholder committee put together by the Solicitor General. We feel the adequacy committee that is currently in place would be the best forum to deal with these issues. We believe a legislated committee would allow for a public airing of how personal information could be accessed, and this would not be in our members' best interests.

In closing, we would like to thank all members of government for their interest and support in this important area. I would be pleased to try and answer any questions you may have.

**The Acting Chair (Ms Marilyn Mushinski):** We have approximately six minutes for questions and we'll start with the Liberals.

**Mr Levac:** Just a question on the concerns you outlined. If you knew an amendment was coming to take care of the concern that's been voiced by a couple of stakeholders regarding the information being disseminated in a public forum, if that can be stopped and maybe given to the executive council, would that alleviate your concern about the information being available? Under this particular amendment, legislative counsel tells us it would not be subject to the freedom of information and privacy act.

**Mr Bruce Miller:** We think that would be a very positive step and a positive amendment. Having said that, we have had talks with the Solicitor General and it appears he supports our concerns. We are meeting with him in the very near future to try and deal with this matter, to see if we can get it solved or rectified as soon as possible.

**Mr Levac:** Could you tell us a little about the adequacy committee as you know it today?

**Mr Bruce Miller:** It's a stakeholder committee put together with a cross-section of police representatives from the province. It includes the Ontario Association of Chiefs of Police; the senior officers, Toronto Police Association; the Police Association of Ontario; the Ontario Provincial Police Association; and the Association of Police Services Boards.

**Mr Levac:** Great.

**Mr Bruce Miller:** It could be expanded to include, in a subcommittee, other justice personnel as well, but it has been a very well-functioning body and we've seen some positive results come out of it.

**Mr Levac:** I acknowledge that you indicate in your presentation that the other stakeholders at this particular moment are not mentioned and not referred to by the adequacy committee. Those stakeholders may have a concern about that as well.

**Mr Bruce Miller:** Certainly. I think they should be included because it's an important issue, as I said.

**Mr Levac:** I appreciate very much the fact that you said this is an issue. The bottom line is that we are now importing this problem and we must prepare ahead of time as best as possible. The reality, as I understand it, is that we already have this problem, and there's plenty of evidence to indicate this has been going on for quite some time. Do you have any idea whatsoever how long any of the stakeholders have been asking a government whether or not they're taking action on this, and are you subject to any knowledge if this government has taken any action up to this point?

**Mr Bruce Miller:** Just speaking from the perspective of the Police Association of Ontario, we see this as a relatively new phenomenon that's developed. We've only recently had discussions with the government in power, with your office and members of the government caucus on this matter.

**Mr Levac:** You can be assured of our continued support in terms of the introduction of the bill, making the distinction obviously that this is private members' business and each member gets to put before the House what he wants. This has been vetted through our party and supported 100%. As a note to the members on the government side, the Solicitor General spoke to me today as well and indicated overall support for the philosophy we're trying to adopt: that all of our stakeholders need protection, and recognizing that indeed it is an issue that we have to act on.

I'll leave you with this last question, unless my colleague has one. In terms of the amendment I mentioned at that point, would you be willing to take a look at the passage of this with a board or committee that's being struck in recommending that all stakeholders need to be part and parcel of that and somewhat distant in order to look at all ministries?

I have to clarify. What I'm concerned with is that possibly the Solicitor General is only going to take care of the one from the Solicitor General, and there are actions actually happening today in which some ministries are doing things that jeopardize our stakeholders already, such as the selling of information and all of the other ideas that have been floated by many of the stakeholders.

**Mr Bruce Miller:** We would certainly support the position if it came up at the adequacy table that other justice personnel should be included in the process, because I believe they have the same concerns we do.

**The Acting Chair:** Government members.

**Mr Frank Mazzilli (London-Fanshawe):** Thank you, Mr Miller, for appearing, with your busy schedule. I know you were on CP24 urging our government to pressure the federal government into toughening up the Young Offenders Act, which I'm sure we will do.

But back to this bill, what is your understanding of how this issue came up in the first place? I support the bill in concept as to the intent of what's being done, but what information was revealed to the public, from your understanding, that made this an issue in Ontario?

**Mr Bruce Miller:** I think it's come forward through the media. From my own perspective as a front-line police officer in London, it was something we saw happening in the last several months before I left the force, where we saw organized motorcycle gangs doing surveillance on the police station parking lots and things of that nature. It's a relatively new phenomenon and it's something we believe needs to be dealt with fairly quickly.

**Mr Mazzilli:** You want it done quickly. This bill's intention—I just want to read the explanatory note: "The bill would create a board to examine issues regarding the collection, dissemination and safeguarding of personal information about personnel involved with the criminal justice system." The board would be composed of representatives from different ministries, police officers, correctional officers and many others, and they are to recommend to the Legislature each year. I think this

needs to be done, and much of it can be done by regulation. The two pieces of personal information would be the ownership of a motor vehicle that would tie an address to the owner, or a driver's licence. Is that your primary concern, those two pieces of ministry information?

**Mr Bruce Miller:** I think those are the two most obvious concerns that jump out. There may be other areas. We are planning to explore this with our membership in the next few weeks to see what other areas need to be covered off, and then we will be raising them with the minister.

**The Acting Chair:** Thank you very much for coming in, Mr Miller.

## TORONTO POLICE ASSOCIATION

**The Acting Chair:** The next speaker is Rick McIntosh of the Toronto Police Association. Good afternoon.

**Mr Rick McIntosh:** My name is Rick McIntosh. I'm a full-time director with the Toronto Police Association. I am also here on behalf of NAPP, which is a new organization, the National Association of Professional Police.

The Toronto Police Association is the largest in the country and represents over 7,000 members. NAPP is made up of over 18,000 members from the largest police associations in the country. In Ontario, NAPP consists of the Toronto Police Association, the Ontario Provincial Police Association and the Niagara Police Association, with a combined membership of over 13,000 police officers and civilians in this province.

I have been a front-line officer for over 25 years in the city of Toronto.

I would like to start by thanking the committee for allowing me the opportunity to speak today on Bill 27. I would particularly like to thank the honourable member, Mr Levac, for bringing this bill forward. I hope this bill will result in action to bring about the much-needed changes to ensure the safety of police officers, crown attorneys, the judiciary and corrections officers, as well as their families.

I would also like to thank the Solicitor General, the Honourable Mr Turnbull, and the Minister of Transportation, the Honourable Mr Clark, for their continued support and ongoing talks that we've been having with them.

The issue regarding the safety of police officers, civilian members and their families has never been more important than it is right now.

I would like to speak on a relatively new trend that is developing in Ontario, and that is the increased number of threats and the intimidation being used by organized crime and gangs toward our members and their families. This is a phenomenon that has taken place in other parts of the world and is now being practised in Ontario. Ontario is not exempt from the gang warfare that has been seen in Quebec, and Toronto is not exempt from the

gang problems that other large Canadian and American cities have experienced.

We know our police stations and parking lots are under surveillance by both organized and street-level gangs. We know gang members are following officers home. We know gangs have infiltrated various companies that have access to our private information. Ministry offices in other jurisdictions have been infiltrated by organized crime for the purpose of gathering personal information on their enemies, as we have seen in Quebec. Gangs have become stronger, bolder and better organized, to the point where they conduct surveillance, counter-surveillance and intelligence-gathering on the same police officers that they are dealing with on a day-to-day basis. If these trends are allowed to continue, officers will have to start paying more attention to their personal safety and that of their families, rather than safeguarding the community as they are entrusted to do. Our members' personal information must be protected.

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I have a little clip from a video here. This is actually a training video that is shown at our police college and it's on gangs. This is going to take about a minute. You'll see a section on graffiti, and in the package I've given you there's a lot of mention of graffiti, 187, spray painting on walls and gunshots. Then you'll see an actual member of the Bloods, which is a gang from LA that is now in Toronto, as we have all the gangs, being interviewed, talking about how they do surveillance on our police stations.

*Video presentation.*

**Mr McIntosh:** This is an officer from the Toronto transit police who's an expert on graffiti.

See the number 187 here, which means death, in code, in California.

This is one of our officers. He's threatening one of ours.

When we're investigating any of the gang members in a—

**Interjection:** Sylvester Stallone.

**Mr McIntosh:** Yes, not the sharpest knife in the drawer, that guy, but he is a member of the Bloods, a very violent group.

In the package that's been handed out, we did a quick summary of some of the threats that have been made to our officers just in the last little while, and the number of threats are increasing. Also, there are newspaper clippings in here on other threats made against officers. If you go about halfway through, there's a newspaper clipping on bikers. They actually have a Web site with pictures of our joint forces officers and they ask for bikers or anybody to log on to the Web site and try to identify who these undercover officers are.

As a result of the increased number of threats made to officers and their families, the Toronto Police Association and the Toronto Police Services Board have joined forces to try to rectify the growing problem. The security of all police facilities is currently being examined and reviewed. As well, an officer safety section has been

added to our intranet Web site so that our members can protect themselves. Talks are also underway with current ministries which will protect the identity and privacy of our members and their families.

As police officers know, when dealing with organized crime and gangs, secrecy is of the utmost importance. If the gangs find out what precautions are being taken to safeguard the people you and I want to protect, they will find other means of achieving their goals, which will only counteract the measures we hope to implement.

Having said that, section 4 of Bill 27 raises some serious concerns for the police associations that I'm here today to represent. Those would be the public records that would become available if recommendations are made directly to the assembly.

I would like to thank you once again for allowing me the opportunity to speak this afternoon. If you have any questions, I'll be glad to try to answer them.

**The Acting Chair (Mr Ted Chudleigh):** Thank you very much, Mr McIntosh, for making a presentation to the committee. I'm afraid you've used up your time.

#### ONTARIO PUBLIC SERVICE EMPLOYEES UNION, LOCAL 308

**The Acting Chair:** I would now like to call the Ontario Public Service Employees Union, local 308; Steve Clancy, president. Welcome to the committee, Mr Clancy. You have 10 minutes to make a presentation and/or to answer questions.

**Mr Steve Clancy:** I'd like to thank you for giving me the invitation to come here today and speak on behalf of my members at OPSEU, local 308, in Peterborough.

I'm a correctional officer. My name is Steve Clancy. I work at the Peterborough Jail. I'm also president of OPSEU, local 308. I've come forward today to relate to you the importance of Bill 27 and how critically important it is for people working in the justice division to have their confidential information protected. I would like to give you an example of an incident where there was an accidental release of confidential information of a staff member I work with at the Peterborough Jail.

In the spring of 2000, a correctional officer was involved in a bribery investigation as a witness for the crown. As a result, an inmate was charged with attempting to bribe a peace officer. During the police investigation, the correctional officer gave a witness statement and was asked to provide his personal information by the police officer—that would be his name, his address, telephone number and his date of birth—which he did. This information was offered as the correctional officer felt that it would be kept in the strictest of confidence, considering he was giving his personal information to a police officer.

Unfortunately, approximately one month later there was a major breakdown of policies and procedures, and the police officer's notes, including the staff member's information, landed in the hands of the lawyer for the accused. A crown brief was developed and the confi-

dential information of the staff member was included. As a result, the defence attorney was given a copy, which he in turn supplied to his client, who was an inmate incarcerated at the Peterborough Jail. After the inmate received the information he started to brag to the other inmates and staff at the jail that he knew where the officer lived and that he knew his telephone number and that the officer had better watch his back. So it was a threat levied against the staff member.

This threat made by the inmate put all staff at the facility on notice that there was a possible breach which led to the release of confidential information, which nobody felt comfortable with. It turned the facility upside down and made a lot of people panic. An investigation was started and the allegations that the inmate was in receipt of the information he bragged about was found to be true. So we launched an internal investigation, and that information the inmate was bragging about was true.

The officer and his family became aware that they would have to watch every move they made and screen all their telephone calls. They also had to swallow a tough pill and go out and inform their neighbours that the information had been released and was in the receipt of an inmate, to offer them protection as well.

The investigation was carried out, albeit in a swift and professional manner, by senior staff at our facility, but this did not minimize the stress and the tension that was added to the staff member conducting an already stressful and tension-filled job.

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Because the inmate also lived in the officer's home area, he had knowledge of the neighbourhood and the lifestyle and patterns of both the staff member and his family right at his fingertips. Any threat he was bragging about could easily and confidently be carried out, if in fact he was serious about his threats, which we still don't know to this date.

For approximately one month he was in receipt of that information before we finally went in and retrieved it from him on a cell search. So he had that confidential information in his hands, which he probably copied, and he bragged on several occasions about sending it to other inmates, clients who were in our custody at that time within the adult system. So we could not easily take any chances, because of the past incidents of this nature, and had to request a transfer of the work location for the staff member and improvements to his home security, which the ministry was obliged to provide.

That was what occurred back in the year 2000 with a staff member. He's currently still not in our system; he's been removed from the adult system and transferred over to a young offenders facility. The incident that I've related to you is not an isolated incident, but one that alarmingly enough happens on an all-too-frequent basis.

I read a book a while back called *Cruel and Unusual*. It's the shocking reality of life behind bars in Canada. It tells the story of a British Columbia correctional officer, Frank Newton, who had his hands and arms blown off back in 1996 by a bomb that was delivered to his house.

That's the shocking reality of what can happen with the leak of confidential information into the wrong person's hands, especially with the clientele we deal with in a very volatile, day-to-day basis.

Bill 27 is a common sense solution that would prevent this release of confidential information and eliminate this type of occurrence. I'm here today asking that you do something to plug this gap to protect all of our lives and safety within the corrections division. I thank you very much for your time.

**The Acting Chair:** Thank you very much. That leaves us about five minutes for questioning.

**Mr Mazzilli:** Thank you very much for attending. Certainly what happened to your member should have never happened. When a charge is laid—and all witnesses, whether they're correctional officers or civilian witnesses—the only disclosure that should be given to the defence is the statement with the name and no address. Those policies are in place. As you correctly said, that certainly fell apart and your member's information was released.

This bill in fact would make things even cloudier, if you will, because it says, "The board shall establish its own policies and procedures," so it's above policies and procedures that are already in place.

I wanted to talk about something that Mr McIntosh pointed out before, because I think it includes police, correctional officers and judges, not just in relation to the elimination of personal information, drivers' licences and ownership of vehicles, but when we're talking about surveillance, that's what organized gangs are now doing. So aside from just trying to obtain your address, they're following people home after their shifts and that sort of thing.

We heard about surveillance on the Internet, about "identify this officer," by organized criminal groups. I think that should be a Criminal Code offence and that your organization should lobby for that. There's no way on earth that correctional officers or police officers should have their faces posted on the Internet by an organized crime group and get away with it. That should be a criminal offence.

I support you. The concept of not getting personal information from police officers and correctional officers I support. This is certainly too bureaucratic for my liking and I think it can be done by regulation. So thank you very much for your presentation.

**Mr Bruce Crozier (Essex):** You probably heard in earlier testimony that this seems to be a recent phenomenon, and yet I'd like to refer back to the information that I was going through from the Toronto Police Association under "Threats to Justice System Members." They give one example that goes back to 1996, five years ago. Would you say from your experience this is a recent phenomenon or is it something that may even go back further than that?

**Mr Clancy:** The violence inside the institutions has been escalating for years. Lately, over the past little while, we've seen quite a significant rise in assaults

against jail guards within the provincial system. Just recently I received a telephone call that our facility is being closed as of 9 o'clock tonight due to the violent behaviour of the inmates who were incarcerated at the Peterborough Jail over the weekend. They've closed our facility. We just got notified by telephone this afternoon that they demolished the institution to such a severe state that they found it necessary to close the institution and move the staff and the inmates tonight at 9 o'clock. All staff on duty tomorrow morning will report to Millbrook Correctional Centre as a result. These incidents are ever-increasing on a day-to-day basis.

**Mr Levac:** Under section 2 it says, "The mandate of the board is to ... examine issues regarding the collection, dissemination and safeguarding of personal information about ... officers, court officials, correctional officers, parole and probation officers and others involved in the criminal justice system...." Do you find that too bureaucratic?

**Mr Clancy:** That is quite bureaucratic, isn't it?

**Mr Levac:** Do you find that bureaucratic in terms of collecting the information which was referred to by Mr Mazzilli beyond the scope of what the board should be collecting?

**Mr Clancy:** I'm not sure of your question.

**Mr Levac:** The implication you made was that it was the Ministry of Transportation only.

**Mr Clancy:** Correct.

**Mr Levac:** But this statement goes beyond that. Do you believe that this goes beyond just a few pieces of information?

**Mr Clancy:** It should include all corrections people, all people within that justice division, to protect each and every one of us as a safeguard.

**The Acting Chair (Ms Marilyn Mushinski):** Thank you very much for coming in, Mr Clancy.

#### PROBATION OFFICERS ASSOCIATION OF ONTARIO

**The Acting Chair:** The next speaker is Cathy Hutchison, President of the Probation Officers Association of Ontario. Good afternoon.

**Ms Cathy Hutchison:** Good afternoon. I'm going to start with just a brief introduction of who we are and who we represent. The Probation Officers Association of Ontario represents probation officers in community and social services who take care of 12- to 15-year-old young offenders. So they supervise the phase one young offenders. We represent probation and parole officers in the Ministry of Correctional Services. They supervise the phase two young offenders, who are 16 and 17, as well as adults' parole, conditional sentences and probation.

We have seen some quite disturbing trends in the field over the past few years. I'm just going to touch on some initiatives—some are legislative change and some are just trends—that have resulted in an increase, certainly, in the safety situations for our officers.

One of the situations we've been seeing for several years now is an increase of the mentally ill offenders being under our supervision. That partly results from the deinstitutionalization of the mentally ill, but we have seen many cases where judges have been placing offenders who should perhaps be in institutions, especially in times of extreme instability on probation or other types of community supervision. As a result, some of those mentally ill offenders also have the tendency to fixate. We have had situations where officers have been assaulted, threatened and been the victims of repeated telephone calls. We've had one officer and her husband who were being stalked by an offender in the north of Ontario and another situation in Toronto where an officer had to change offices because of repeated threats and harassing telephone calls.

Another trend that has contributed to this is the increase in the number of domestic violence cases that we're supervising. Because of the protocols and the legislation around this—they are very positive, but we have become increasingly overwhelmed with supervision of cases resulting from domestic violence scenarios. What happens with these cases is that the offenders view themselves as forced into counselling or treatment. They're often in denial of the situation that they have. We also have to, in those scenarios, often revoke contact with the offender's wife or partner, and that can be very difficult and cause the offender to be very disturbed. They also often view the probation/parole officer as interfering in a personal relationship, even though it is actually a criminal justice issue.

We have mandatory victim contact with these cases, and often, again, the offender can be quite disturbed by that. We also have to contact their new partner, who may or may not be a victim of domestic violence. Again, that can cause the offender to be quite angered with the officer.

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Another situation: because of the criminal harassment legislation, we are supervising many, many stalker-type offenders these days, and we've had scenarios where these people have turned and become obsessed with the officer. Because of that legislation, many of these offenders actually end up with a probation order, even if it follows custody. As I stated, we've had situations where officers have had to change offices. If the offender could get a hold of their home address or home telephone information, that would be a real problem, because no doubt the telephone calls and the visiting would occur there.

Other situations which place us and our families in great jeopardy are things like testifying in court about offenders' activities, bail hearings, sentencing hearings, trials and immigration hearings. Also, as a result of the conditional sentence legislation, we're supervising many people now who previously would have received jail plus probation. These offenders, in many cases sex offenders and serious violence offenders, are receiving straight conditional sentences and they're not going into custody.

Again, with these cases, we have to give permission letters for them to leave their residence or to leave the province of Ontario, and denying in a situation like that can cause quite a bit of hostility against the officer.

A new initiative in corrections which is positive but creates some problems in terms of safety is the intensive supervision stream. That's part of the probation and parole service delivery model. In that stream, we're doing many more home visits. This is an issue for us in terms of the licence plate information. In larger areas we don't even have ministry vehicles, so officers do the home visits with a personal vehicle. Then you're faced, first of all, with the offender seeing your vehicle and simple things they don't need to know, such as if you have a car seat, if you have a child and what the vehicle looks like, because it may be damaged. Furthermore, we have concerns about licence plate information. If they have access to that, if the MTO licensing facilities are privatized, if there's a way that organized crime can get access to that, then our home telephone and address information would be known.

The intensive supervision stream also has much closer enforcement and monitoring, which is very positive for public safety, but again can cause the offender to have some hostility toward the officer.

All of these initiatives, many of which are positive in terms of legislative moves, have placed us in greater situations of safety. We have had over the past few years more assaults and more threats on our staff, more incidents of weapons being brought into the offices and, of course, with technology and organized crime and things like licence plate information being accessible, we have greater concerns about our personal information. To perform our duties well, to really protect the public, we have to feel that such information cannot be obtained, because the officer has to work with these offenders for years, not just for one day. We're working with them for years, and we have to know that the information is private.

**The Acting Chair:** We have time, perhaps, for a couple of questions.

**Mr Levac:** Cathy, you mentioned earlier mental health issues, domestic violence, stalkers and intensive supervision. You did mention organized crime. Are you indicating to us, then, by your presentation, that you believe that any one of these four items you mentioned, or all of them, have a relationship to organized crime or biker gangs, or is it an independent issue?

**Ms Hutchison:** I was mentioning them independently, yes.

**Mr Levac:** Do you know of any background information? I have anecdotal evidence, but some of these you mentioned are actually making links to organized crime and them taking advantage of some of the situations you described. Are you aware anecdotally of any of those taking place?

**Ms Hutchison:** Organized crime connected with mental health?

**Mr Levac:** Yes, with inmates who have mental illness. I've heard some stories in the corrections field

where organized crime is actually taking advantage of their situation, that they follow somebody easily and they become somewhat of a lackey for that group.

**Ms Hutchison:** I haven't heard of it with the mentally ill, but we've heard of it with some younger people—for example, of their going from some of the organized street crime gangs and recruiting from there.

**Mr Levac:** Finally, do you have a problem with the creation of the board as outlined in the legislation?

**Ms Hutchison:** No, because as I indicated, it's actually quite a complicated issue. There are many issues that we have. I don't have a problem with the board being created, no. I think it would be helpful.

**Mr Mazzilli:** Thank you very much for appearing, ma'am. I was certainly listening to your presentation intently, that probation officers work with violent people, as do police officers and correctional officers. Some of the issues you talked about, threats and so on, are covered under the Criminal Code and always have been. We heard Mr Crozier asking if this is a new phenomenon. I can tell you that all police officers, correctional officers and probation officers have been dealing with threats—whether they were criminal or not depended on what the person said—probably from the beginning of time. That certainly hasn't changed.

What has changed slightly now is the level of surveillance by organized groups. That level of surveillance doesn't just take in personal information, but goes further. It goes into following people home and so on, things that likely come under the stalking law, but you need too much, things that probably should be in the Criminal Code for people involved in the justice field.

What this act does is make it very bureaucratic on just personal information. What you talked about was simple licence plate numbers and the prevention of getting that information. We support that. We support that the public should not have access to the information, whether it's from a motor vehicle or a driver's licence, of people involved in the justice field, just to clarify that point, but we do not support the creation of a whole new system to do so. We believe that it can be done, and the Solicitor General, along with the corrections minister, has made a commitment to get it done. So that is our position, and I will certainly make sure that they get it done.

**The Acting Chair:** Thank you very much for coming in, Ms Hutchison.

DAVID KERR

**The Acting Chair:** The next presenter is David Kerr, probation and parole representative for the Ontario Public Service Employees Union.

**Mr David Kerr:** I'd like to echo my thanks, just as Cathy did. It's kind of nice to follow her, because I think the information she provided gave a very—unfortunately—rapid but brief synopsis of the responsibilities we have.

I've been working in the criminal justice system now for just over 24 years in a full-time capacity, and three

years prior to that in a part-time, unclassified capacity. I've worked as a correctional officer, I've worked as a youth correctional officer and I worked as a probation and parole officer for a significant number of years. In listening to the comments the members have made here recently, I suppose as part of my presentation I'd actually like to address some of them.

Mr Mazzilli made some comments with regard to police officers and correctional officers. I'd like to see that probation officers are also enshrined in this piece of legislation. I know it's there now. I'd really like to see it not get amended out. Using the word "surveillance" in organized crime and the surveillance of individuals—that's what we're about to get into in the very, very foreseeable future with electronic surveillance of offenders in the community.

The reference to the Internet sites, where the previous speaker had mentioned officers of their unit being publicized with biker organizations looking to identify who the individuals are—after reading it in the London Free Press, where they actually listed the Web site where you could go in and view the photographs, I chose to do that, but not from my home personal system because the technology the biker organizations or any organized crime organizations would have are most likely far superior to anything I or the government systems would have to protect that. When I viewed their Web site, I actually used the justice system's Internet service provider to access that site, to protect my own identity.

The member from Essex spoke about time frames and how recent or how dated incidents are.

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I can recall personal incidents, such as in 1988—being the second major incident in my life and in my career—when a parolee's wife tracked down where I lived and phoned my residence. I wasn't there and my wife answered the phone. I had one child at that time. She made it perfectly clear that it was my fault that her husband was back in jail for violating parole, that she wanted some answers to some questions and was prepared to come over to my house and wait until I returned home to find out the reasons her husband was in jail, notwithstanding anything that he would have done to put himself back there.

In 1996, when I was working as a correctional officer at the Windsor jail, I had an inmate in his cell block approach me and ask me, "Do you still live at 93 St James Street in Essex?" I had no response. He further inquired if I still lived there with my mother and two brothers, all of which was true. I had no response. It scared me. That information might have been obtained strictly through the phone book. Since 1998, I've been forced to have, in my opinion, to protect my privacy, an unlisted phone number. That's at my expense.

Ms Hutchinson spoke about the partner contacts, and the new partner contacts in particular. That's creating a very dangerous situation for us. It's mandatory in our policies to do that. Offenders get rather stressed out knowing we have an obligation to contact someone who has no idea about their criminal background.

We've had some recent incidents that I'd like to speak about. As recently as last week, a staff member in one of our community offices in a rural area—not a metropolitan area—had her vehicle vandalized in the parking lot in the workplace. The offender who likely inflicted this damage—and it hasn't been proven yet—was mentally disadvantaged and would have the opportunity to take that one step further and take it away from the workplace and into the residential setting, impacting on other families.

The most serious one that I can think of in recent times was here in the city of Toronto, where one of our probation officers was approached by an offender who was under supervision and showed him a photograph of his child—I'm not talking about the offender now, I'm talking about the probation officer's child. The offender showed him a picture of his son just to let him know that he knew he had a child and he knew that he had the ability to get a photograph of the child. The officer was aware that he was a sex offender; he was, in fact, a paedophile.

These are very frightening situations. All this because we don't have the ability to protect our information, to keep it private. At what expense? Our families? Perhaps our lives? I fully sympathize and support the previous speakers I heard, about some difficulties. I would ask this committee, when you bring this back into the House, to support this.

**The Acting Chair:** We probably have time for one question each.

**Mr Mazzilli:** I'll just make a comment that some of the situations you pointed out in 1996 and 1998 about your personal information had to do with telephone books. The situation in Toronto is much like that which Mr McIntosh spoke about, a posting or a picture of a child. I would agree that just a simple comment with a picture of someone's child—just someone suggesting—should be a criminal offence. Presently, for "threatening" in the Criminal Code, you have to make a threat of life or property. But to me, just the suggestion that someone holds up your child's picture and suggests that something possibly might happen is a criminal offence.

I would urge you and I would urge the Police Association of Ontario and the Ontario Provincial Police Association to ensure that, with the way organized crime is functioning, with sections like that, to lobby the federal government to make that a criminal offence.

**Mr Levac:** Are there steps the province government can take, like maybe adopting this bill to assist our federal cousins and the federal government in trying to help fight crime?

**Mr Kerr:** There certainly are. I fully agree with what Mr Mazzilli said. Those are criminal offences and we treat them as that, but it needs to go one step further and have the ministry or the government of Ontario put something in place that will give us better protection from offenders or from anybody tracking us down to our personal dwellings and settings. It goes far beyond that.

**The Acting Chair:** Thank you very much for coming this afternoon, Mr Kerr.

**Mr Kerr:** If anyone wants to contact me directly at any other point in time to find out more information, I would welcome that and I'd certainly make myself available. I'm sure the clerk can provide that information, with my consent.

#### BARRY SCANLON

**The Acting Chair:** The next presenter is Barry Scanlon, OPSEU correctional services employee representative.

**Mr Barry Scanlon:** Good afternoon. My name is Barry Scanlon. I've been a correctional officer in the provincial correctional system for 17 years. Through my career with corrections, I've worked in the Toronto West Detention Centre and the Guelph Correctional Centre, and I'm currently employed at the Waterloo Detention Centre in Cambridge. I've also been a member of the provincial correctional joint occupational health and safety committee since 1994.

In 1994, I visited Montreal and met with representatives from correctional offices in that province. At that time, the representatives told me they were dealing with some serious concerns around correctional officers' safety with respect to biker gangs. The situation was truly frightening at that time. Many officers had been threatened, officers' cars had been broken into while they were at work and documents were stolen from the cars; blasting caps had been found in one provincial prison; the drug trade in one very large provincial institution was so massive that rumours were that biker gangs were having members or associates commit minor crimes in order to get into prison to bolster gang members' numbers and get a bigger piece of the drug action.

Some minor responses to the Quebec correctional officers' concerns were made but, in retrospect, not enough was done. Since that time, two Quebec correctional officers have been brutally murdered and countless others have lived with fear and intimidation. Members of biker gangs have been charged in the murders.

Recent revelations have indicated that bikers routinely use driver's licence records to track down those they consider enemies or those they wish to intimidate for other reasons. With the recent biker recruitment drive in Ontario, we can anticipate that bikers are beginning to put lists of their enemies together as I speak.

How concerned have we been in correctional facilities in Ontario about maintaining our personal privacy? A few short years ago, we challenged a government directive which forced us to wear a nametag at work. We felt that being identified by a badge number at work was sufficient for inmates who might want to identify an officer for the purpose of a complaint. The Ministry of Labour eventually agreed with us, and today we wear a picture ID with only an identification number on it. Each impediment we are able to place in the way of a dangerous individual or group trying to find out personal information about us makes it that much more difficult for them.

More recently, we have been able to have our minister agree with us that we can use the institution or office where we work as an address when an inmate is criminally charged. Even though the minister has agreed with the practice, to my knowledge there is no formal policy in place within the ministry yet. I went through this myself when I charged an inmate in January and made a criminal complaint against him for assaulting me, biting my finger and threatening to kill me and my family. There was no policy in place, and I informed the police officer who took the information down that in fact I could give the institution address for my own address.

What used to happen was the correctional officer who was a complainant or a witness in a criminal case involving an inmate would have to give his or her home address to the investigating police officer. Later, as described earlier by my colleague, an inmate's letter provided the inmate with disclosure on the charges against him. The correctional officer's home address would also be provided to the inmate as part of the disclosure. The informal practice agreed to by the current Minister of Correctional Services needs to be formalized immediately.

#### 1650

How easily can you currently track a correctional worker to their home? I received a call from a female correctional officer who was very upset. She'd gone to her car, which was parked, along with about 120 others, in the general parking lot of a building she had moved to two months previously. A note, along with a name and phone number and message to call, was on her windshield. At first, the correctional officer assumed the number must have been that of someone who had bumped her car but, upon calling the number, she discovered that the individual was an ex-inmate from an institution where she had not worked for at least six months. The inmate had been serving his sentence as an outside maintenance worker at her former facility and had watched her drive in to work. Subsequently, using her licence number, he had found out her home address.

Two weeks ago at Toronto West Detention Centre, I watched three unsupervised inmates working in the parking lot watching which officers came in which car. They were actually facilitating the collection of officers' personal information by inmates while they were serving sentences. It's a situation that needs to be addressed immediately.

Most of us take our own personal precautions to prevent criminals from finding out about us and our families. Nevertheless, we desperately need the government's help over the next few years to protect our privacy. Passing Bill 27 will be the first giant step toward protecting correctional workers, their families and the public at large.

The situations and circumstances I mentioned are just a few of the more blatant and obvious means of gaining personal information on correctional workers now utilized by criminals. As correctional workers, we have learned to live with and rebuff daily attempts by crim-

inals to threaten and intimidate us as we try to do our jobs. The correctional workers I represent are confident that Bill 27 can move us toward minimizing the chance of those on-the-job threats and attempts to intimidate spilling over into our personal and family lives. We have an opportunity to take a significant weapon out of the hands of not only biker gangs but also other street gangs and dangerous individuals as well.

I ask for you to please help us to continue to provide the public of Ontario with top-quality public service and safety. I'd like to thank you very much for your time this afternoon.

**The Acting Chair:** We have time for perhaps one question from Mr Crozier.

**Mr Crozier:** Perhaps you heard earlier testimony where I asked about this being a recent phenomenon. But Mr Clancy, Mr Kerr and even Mr Mazzilli have indicated that this has gone on for some time, more than just a few years. My point is this: the adequacy committee has done an outstanding job in bringing issues to the fore, even problems similar to this, but this bill asks for a criminal justice privacy board to be formed. In my view, that would address this particular problem in a more detailed way. Would you comment on that?

**Mr Scanlon:** I think that's correct. One of the difficulties we've had at health and safety in addressing these issues is the fact that we have three or four different ministries involved here. We go to one and we're told it's the responsibility of another one. We don't have the accountability. When we see this, we kind of end up in a bureaucratic mess, in limbo, because we say that the police reports should not contain this personal information, that it should be blacked out, and now we've got an agreement that it not be collected in the first place. But that's taken a number of years and there have been a number of people's lives put at risk.

We see this committee as cutting through that stuff and overriding the three or four ministries involved. That would be the Ministry of Correctional Services, the Solicitor General, the Attorney General, and the Ministry of Transportation, which was the fourth one mentioned.

**Mr Mazzilli:** I just want to pick up on a few of the comments you made. As I acknowledged before, using the workplace as an address should be a policy, and I support you on that. You know that all your members cannot give the police your home address, and you can tell them that, but you choose not to get confrontational and you do give that. Occasionally, we hear of what happened that should not have happened, a disclosure of personal information that should never have occurred. There are policies in place to deal with that.

My concern, and what you talked about, is that we don't know that the home address was not found through surveillance. We assume that sometimes it's found by licence plates or, in fact, someone could have been followed. But the obvious ones, whether it's correctional officers or police officers, are licence plates and driver's licence information. Those are the two obvious ones. Would you agree with me on that?

**Mr Scanlon:** Those are two that stand right out. Those are two avenues that are currently well utilized by these individuals in tracking people.

**The Acting Chair:** Thank you very much for coming in this afternoon, Mr Scanlon.

#### PEEL REGIONAL POLICE ASSOCIATION

**The Acting Chair:** The next presenter is Paul Bailey, chief administrative officer of the Peel Regional Police Association. Good afternoon, Mr Bailey. How are you?

**Mr Paul Bailey:** Good afternoon, Madam Chair, and thank you. With me today is David Kingston. David is the president of the York Regional Police Association and a long-serving police officer in Ontario.

My name's Paul Bailey. I am the CAO of the Peel Regional Police Association. I was a police officer for approximately 28 years. David and I have both worked together at one time or another in the policing business. I have done investigations on organized criminal biker gangs in my previous history as a detective. We wish to thank the committee for the opportunity to share our thoughts and views on Mr Levac's private member's bill that introduces legislation that will protect police officers, criminal justice personnel and their families.

First let me say that we support in principle the essence and direction of Mr Levac's private member's bill. To many of us, it makes sense that we protect the very people who put themselves in harm's way in order to protect the public from those who will abuse or undermine our justice system. I want to make it clear that it is not only police officers who feel the need for this type of legislation; it is all those who operate in the criminal justice system. For greater clarity, I'm referring to police officers, correctional officers, prosecutors and others that have a direct or indirect interest in maintaining an effective justice system; I include probation officers in that as well.

Over the past several years, organized crime has made a significant and detrimental impact on the economic fabric and public peace in Ontario. In one degree or other, major organized crime groups thrive in Ontario, and particularly in the greater Toronto area, which seems to gain so much notoriety.

One of the most visible threats to public peace and security is the recent invasion of outlaw motorcycle gangs, in particular the Hells Angels and the Bandidos. Both these organized groups have worldwide affiliation and a history of violence. With the increased presence of these gangs comes increased media coverage, and with this comes the need for increased enforcement by police services across the province. That is where this type of legislation becomes particularly important to police officers and others engaged in the prosecution of organized crime and those less known but equally dangerous criminal groups—and we've heard about the Bloods and the Crips and so on.

With increased police enforcement comes the need and desire of criminal groups to respond to this increased

enforcement. They often find it necessary to intimidate public officials by outright threats, or to offer money or other interesting things to entice and compromise these individuals so they can control them at later dates. This phenomenon is not new to Ontario or North America. In June 1999, federal and state authorities in California arrested 11 people on narcotics charges. The ringleader of this drug trafficking organization that dealt in speed, cocaine and prescription medication was the founder and president of the Orange county chapter of the Hells Angels. Interestingly enough, the other person they arrested in this group was the Orange county district attorney. He was involved in this criminal organization.

Many of you here today will recall the vicious assassination attempt on Montreal crime reporter Michel Auger. As you heard earlier, he was gunned down, shot five times in the back by individuals. Information leaked to the National Assembly was obtained from a worker in the provincial government's automobile insurance board. Mr Jacques Dupuis, the Liberal public security critic, said, "It does not surprise me that in Quebec, the bikers would try to infiltrate an organization like that to get really important information. It speaks to the reach of these gangs, and the government has to be conscious of that." I've included in my brief other issues that speak to how pervasive this infiltration of our justice system has been.

I would like to take this opportunity to highlight one particular fact. In January 2001, the Hells Angels had 431 Canadian members with 12 new Ontario chapters. These new Ontario chapters have about 200 members, and that includes 2,000 associates. This doesn't include rivals like the Bandidos and the Outlaws motorcycle groups. We've had issues in Ontario where we've had people watching our police stations with binoculars and scanners, containing this information and putting it on a computer disk. This information can later be sold to people like private investigators or organized criminal groups like the Hells Angels.

Having said that, I would like to turn over this presentation to my colleague, David Kingston.

1700

**Mr David Kingston:** I would like to suggest that the problem Ontario police officers investigating organized crime face by not having their personal information protected is no different than what has been happening in Quebec over the last few years. The problem was caused when police took aggressive and needed action against outlaw motorcycle gangs due to a large number of homicides and the killing of an innocent 12-year-old boy. These outlaw motorcycle gangs now have a considerable presence in Ontario, and I believe past history will reflect what can likely happen in Ontario.

Allow me to highlight just a couple of short incidents that took place recently in Quebec: "Revenue Quebec catching more workers snooping in private files." In May 2001, the Quebec provincial revenue department made a public announcement that employees leaking personal information was a chronic problem. The revenue depart-

ment announced that in 1999, 31 public servants working in the revenue department were caught trying to access private information. This figure doubled to almost 58 in 2000. Seven people were fired in each year this happened. Some of these leaks resulted in one public servant being fired for leaking the addresses of anti-gang police officers to members of the Hells Angels, and also the firing of a number of staffers after provincial police investigated employees from three government departments, including Revenue Quebec, for selling confidential information to a private detective.

The problem with intimidation by organized crime is that it doesn't just impact police officers and public servants working for government agencies; it also impacts the very heart of the justice system.

I'll turn it over to Paul now for some recommendations.

**Mr Bailey:** The purpose of bringing forward the Quebec issue is just to highlight the fact that we've seen what's happened in Quebec. It is here in Ontario now.

We would like to make five recommendations to this committee:

(1) Identify the various government agencies that have personal information on individuals involved in the enforcement and administration of justice. I believe we will all be surprised to see just what information is contained in the respective government ministries.

(2) Take the identified information and create a stand-alone database that will limit availability and access to this confidential information. High-level encrypted technology should be used to safeguard this information.

(3) Closely screen all persons employed in the input, access and release of this information. This screening should be detailed and continuous.

(4) Amend the necessary freedom of information laws to allow more careful release of information, especially as it pertains to law enforcement, correction and justice.

(5) Create laws with significant monetary penalties that will put the onus on Internet companies that store and release information on the Internet. These companies must be held responsible for the release of information that can hamper or compromise the safety of people involved in protecting society.

These are just some of the recommendations. We would like to say in closing that we thank you for allowing us the opportunity to appear before you today. We would also like to thank Mr Levac for introducing this much-needed type of legislation.

**The Acting Chair:** There's probably time for one 30-second question.

**Mr Mazzilli:** Mr Bailey and Mr Kingston, thank you very much for attending. The point you gave in the Quebec situation about public officials leaking information—this may be something the Solicitor General can do. If that does happen, it's a provincial offence and, once convicted, it's obviously a monetary fine and dismissal. I'm sure that's policy, but perhaps is not in legislation. If anyone is here from the Solicitor General's

office, I would urge them to take those notes and look at something like that.

Your point on public officials is right on. I recently held a public forum in London on body rub parlours. As you know, many of them are owned or indirectly owned by biker gangs. The evening this public forum occurred, the bikers attended with camcorders and were filming me, along with the police and everybody else. The media were present, and they were also confrontational with the media, filming the media while the media was filming them, but they were much more aggressive. I think this is an issue that is picking up.

As far as driver's licenses and ownership goes, you know this is a very small portion of the whole big picture of intimidation and threatening. Presently, threatening is in the Criminal Code, but I think intimidation, something less than you need for the evidence of threatening, would be welcomed, I'm sure, by police officers and others in the criminal justice system.

**Mr Bailey:** It's interesting to note that personal information on everybody in this room is not only in the Solicitor General's, Attorney General's and corrections ministries, it's also in the health ministry, the education ministry and some of the smaller ministries. It's everywhere. We need to collect that data at least on the people in this room—and I include you in that—to safeguard it and put it in a stand-alone system that people can't get access to.

You can spend \$10 right now and go to a kiosk and get the licence plate number, registration and home address of anybody in this province. That's pretty sad.

**The Acting Chair:** Mr Levac, 15 seconds. I know that was a very long 30 seconds.

**Mr Levac:** That's a long 30 and you're giving me 15. I appreciate it, Chair.

In essence, I believe what I heard you say at the end is you don't have a major problem with the creation of a board that investigates all these ministries and everything you're talking about.

**Mr Bailey:** I don't have a problem with the board, provided it includes all the stakeholders.

**Mr Levac:** That's right. Thank you very much.

**The Acting Chair:** Again, gentlemen, thank you for coming this afternoon.

#### ONTARIO CROWN ATTORNEYS' ASSOCIATION

**The Acting Chair:** The next speaker is Mr Tony Loporto, with the crown employees.

**Mr Tony Loparco:** Tony Loparco. I'm with the Ontario Crown Attorneys' Association.

Thank you for allowing me an opportunity to speak. Our organization acts on behalf of the now over 700 crown attorneys in the province of Ontario. I'd like to thank you, Madam Chair, for inviting me, although I had very short notice. I wasn't sure what time we were supposed to be here. I see that you're running overtime.

In any event, we feel that this type of proposed legislation is very important. The fact of the matter is that I see the board that's being proposed as a good idea. I see it as a good idea because it can react much more quickly to a problem and make recommendations much more quickly than changes in legislation would allow the government to do under normal circumstances. It would allow, if constituted broadly enough, input from all types of parties who would then give you access to much more information, so that security concerns, which are rampant, as you've heard from all the previous speakers, are properly addressed as those concerns become known.

The only thing I must say is—and I mentioned it to someone involved in Mr Levac's office—I would propose that the Ontario Crown Attorneys' Association be included as one of the members added to any proposed board that's put together. I say that notwithstanding the fact that the proposed board includes a member from the office of the Attorney General. The office of the Attorney General often takes into account the crown attorneys, but not always. I say that specifically because when I first took office as president of the association, I asked about many health and safety and security concerns and was basically told that unless it was in our collective agreement, I'd have to get the information some other way. I frankly found that quite offensive in that it's our association's broad mandate to ensure that our members are safe and secure in the workplace—and outside if necessary.

This type of group would allow our input into that type of situation and, frankly, the release of personal information is becoming of greater and greater concern. I don't know if this commission is aware of the fact that in the past year there have been two very serious death threats against crown attorneys in the province. In one case, a SWAT team followed a crown attorney from the Oshawa region for a month while they were trying to investigate whether or not there were legitimate concerns. No one in his office was aware of the fact that a threat was there. That was something our association became very concerned about. There was also another serious death threat in Peel region, where there was a conspiracy to commit murder, and the person pleaded guilty to that particular offence.

1710

The access to our home information through the Ministry of Transportation is a great concern. I just renewed my licence and asked for a policy they call the suppression of your licence address. I received a letter on Friday—and I wish I had brought it—indicating that I wasn't entitled to the suppression of my address unless I had a letter from a police division indicating that my life was presently in danger unless the address was suppressed. That's a little bit paternalistic, in that you don't necessarily know that your life is in danger until potentially after the fact. For me to have to go to some police department and ask, "Can you write me a letter indicating that, given the nature of the prosecutions I perform, my life is in danger?" is something that is,

frankly, ridiculous. I am sure this type of commission—and for the board to recommend it by this legislation—would come to the same conclusion, that to have to come up with a letter saying your life is in danger is patently unreasonable.

I guess at this point in time that's basically all I have to say. The stakeholders are the only problem I had with it—not just the crown attorneys. The more stakeholders you have, the better the amount of information that could be provided to either the Legislature or cabinet with respect to security issues relating to justice officials.

**The Acting Chair:** I know you are in a little bit of a hurry, so we'll try and keep the questions to a minimum.

**Mr Crozier:** Thank you for coming. There are few things in this life that I value more, and I think this is shared by others, than my family's well-being and my privacy. I think you and others have made that point today, that our privacy means a great deal to us.

I want to go to this point, just for your comment, on the criminal justice privacy board that's suggested in this legislation. I'd like your opinion as to whether it's a board that should have the mandate to deal with this privacy issue in all its aspects and whether you feel that may be the appropriate way to approach this subject.

**Mr Loparco:** Absolutely, because first of all, if it's broadly constituted, you'll get security concerns that are legitimately brought up on a timely basis and, secondly, the greater the input, again, the broader the base of ideas, and it can respond to concerns as they come along. The Internet is a perfect example of something that five years ago no one would have thought of as a potential risk to people in the justice system. Now we see how it can be used in both good and bad ways. A board of this type seeing new threats or concerns as they come along is going to be much more able to quickly react to those threats before something of a serious or tragic nature occurs. To allow a body of that type to deal with those types of issues would be much more responsive to the players in the justice system than to just allow it to happen as something happens and to amend the legislation as you go along in that fashion.

**Mr Mazzilli:** Thank you very much for attending, sir. I was listening intently to your presentation and to others. Certainly, from what we heard today, from a provincial perspective what we can prevent is anyone obtaining personal information as far as driver's licence and vehicle information. That seems to be the predominant provincial scope. Then there are the elements of what you talked about, the criminal threats or threats to life that crown attorneys go through.

I would support that the Ontario Crown Attorneys' Association be a stakeholder in deciding what the provincial government can do. My view and this side's view is that we don't need a commission set up to do this. We heard from previous members, specifically in the corrections field, who were complaining about disclosure of their personal information, which likely occurred either through the police department or the crown attorney's office. Let's be frank about this. So now you're

going to have a board with all those stakeholders, where in fact there could have been violations of policy by those groups.

I do support all the stakeholders around the table in coming up with legislation or regulation, helping the ministry come up with regulation, but I don't think we need to create a province-wide board to look at these things on an ongoing basis. Certainly what we've heard is personal information. I think we can deal with that with the crown attorneys' association at the table.

**Mr Loparco:** With respect to the disclosure issue, thank you for bringing that back up. I just thought I'd mention that it's not a province-wide policy that disclosure not include addresses. I know that in the jurisdiction in which I've worked for the past 11 years, that being Scarborough, we suppress all addresses and ask counsel who require that information to bring an application in court to get to the addresses, if it's necessary. But there are other jurisdictions, and that's because it's not provincial policy and there's no director with respect to personal information, that don't, as a matter of routine, suppress that information. There are certain crown offices in the province, for instance, that just get an undertaking from counsel that they won't disclose the addresses to their clients. In that context you can see there being much potential for accidental or semi-accidental disclosure of information. So there isn't a province-wide mandate that disclosure not be made of addresses.

**Mr Mazzilli:** There ought to be. I said that to the parole officer. That ought to be mandated by policy.

**The Acting Chair:** Thank you very much, Mr Loparco, for coming in this afternoon.

## ONTARIO PROVINCIAL POLICE ASSOCIATION

**The Acting Chair:** The next presenter is Mr Brian Adkin from the Ontario Provincial Police Association. Good afternoon, Mr Adkin.

**Mr Brian Adkin:** Madam Chair, members of the committee, it's my pleasure to address you on behalf of the Ontario Provincial Police Association, as well as the National Association of Professional Police. You've already heard from my colleague, one of our directors, Rick McIntosh, from the Toronto Police Association. It's a pleasure to continue his comments and make some of our own as well.

My name is Brian Adkin and I am the provincial president of the OPPA. I am also the president of the National Association of Professional Police, representing 18,000 police members across Canada, composed of the Toronto Police Association, the OPPA, the Niagara Regional Police Association, the Quebec Provincial Police Association and the Halifax Regional Police Association.

I myself have been a police officer for 28 years. I worked at all aspects of policing. I was a wiretap coordinator for five years as well, where my specialty was

supporting wiretap projects across Ontario, as well as working with organized crime and drug projects and major crimes. I was also a chief fraud investigative officer for the OPP.

The OPPA is the collective bargaining unit for all uniform members of the OPP, from cadet to sergeant major. We represent approximately 5,200 men and women who are stationed throughout Ontario and 2,100 retirees. We maintain a large, specialized investigative unit for motorcycle gangs, drugs, special gangs and intelligence.

This private member's bill, as proposed by Mr Levac, we believe is a very good concept. We appreciate his thinking of all police officers in bringing this bill forward, and we're concerned about the safety of our members and of all the justice personnel in Ontario. We can't forget that police officers, corrections officers, parole officers, officers working within institutions, judges and crown attorneys all need protection.

When I was involved with specialized investigation, there was a group that did counter-surveillance, primarily with motorcycle gangs, on all of our members, and it was expected. But the problem has become far more widespread now. Gangs, as you've heard with Rick McIntosh's presentation, are a concern to us all.

We see the problem from two different perspectives. We see it from the uniform officer's perspective, who has to be worried about, "Where does that person live?" and we see it from the special unit officer's perspective, who is usually dealing with a far more sophisticated and far more lethal type of criminal. We also find in our case that counter-surveillance, both of the mobile type and of the static type, where they're recording licence numbers in parking lots, is becoming far more widespread.

1720

Policing has changed dramatically, and our members must always be concerned about their own and their families' safety. Organized crime and criminal gangs now traffic in personal information about police officers and other justice personnel. Personal information about our families, our vehicles and where we live is recorded by criminals at all levels. Our members, who are very visible in their municipalities, are concerned about their safety. This includes not only our members doing municipal policing in small and large communities across Ontario, but also our members who police the 400-series highways where these people travel back and forth.

The ability to move information to different people is of course enhanced with the Internet. We also have concerns about information which is passed to the criminal element as a result of judicial disclosure which ends up inside federal and provincial correctional institutions and causes us all great problems.

We support the spirit of the intended legislation in protecting our members. We are concerned, however, that the legislation as drafted may not be the most effective way of achieving the shared goal of protecting the privacy and ensuring the security of personnel involved directly or indirectly in law enforcement.

Under the Protecting the Privacy of Criminal Justice Personnel Act, 2001, a board would be struck for the purposes of examining issues regarding the collection, dissemination and safeguarding of personal information about personnel involved with the criminal justice system. The board would report to the Legislative Assembly through the Speaker and be required to table an annual report on its activities, thereby making public the matters considered by the board and possibly exposing weaknesses in the system, to the benefit of the criminal element.

We believe it's very important to have a very direct system and to maintain our confidentiality. If you've been following the papers in the last week, we see the same issue now before the Supreme Court of Canada, when they are in fact going to rule on whether or not these systems which have been developed over the years to advocate and to work with public safety are going to be compromised by being disclosed by the Supreme Court.

The OPPA would support a more confidential process to address the protection of personal information and would suggest that the Solicitor General, in co-operation with the Information and Privacy Commissioner of Ontario and various government ministries, best drives this process. We believe that a process directly driven by the government would be more effective, more efficient and more protective of both personal information and the processes that disseminate the information.

It's interesting to note that this problem has become far more exacerbated within the last year. Within our own association, within the Toronto association and within the National Association of Professional Police, we have made definite steps to try and streamline the processes, and it is working.

The Ontario Provincial Police Association appreciates the efforts of Mr Levac to bring this bill forward. It is a very important issue, and we thank him for his efforts in advancing a solution for the protection of those of us who work within the criminal justice system of Ontario. We look forward to working with all parties to develop a solution and remain available to discuss any other possible solutions which might be presented. Thank you very much.

**The Acting Chair:** Thank you very much, Mr Adkin, for coming in this afternoon.

**Mr Levac:** Thank you, Brian. For the record, you and I have been in contact with each other regarding the bill and you have given us, as you've made a footnote in your letter, your concerns.

Having said that, that has come up a couple of times. Other groups that we heard from today and that we've been in contact with are not having as much problem with the board, per se, as they are with the reporting process that I think you singled out as being the most significant of your concerns, the fact that it becomes legislation. Would you be open to discussing further, then, the possibility of an amendment that might see this report go directly to executive council or cabinet, thereby

protecting it, which we understand from legislative counsel protects it against freedom of information requests?

**Mr Adkin:** In our opinion, Mr Levac, it would be better off dealing directly with the Solicitor General, who is responsible for policing within Ontario. If you look at 4(1) of the act, we're concerned about the type of report that may be laid before the Legislature. We would see a far more streamlined process to be more efficient, where the group that you've identified—and we thank you for identifying our organization in that, as well as the other organizations—would report directly to the Solicitor General, and then identify the problems to the Solicitor General. It removes the bureaucratic steps, and then you can move quickly with any legislation or safeguards that need to be implemented.

**Mr Levac:** I appreciate that response. You also identified the privacy commissioner. In a response to a request of information from the privacy commissioner, they indicate that they, yes, could probably deal with most of the ministries and the municipal groups that are serviced by the province, but they've also indicated a concern that they do not have and they do not cover legislation in dealing with the court system. The privacy commissioner had indicated to me in a telephone call that the creation of this board gets them around that so that their input is also heard within the court system. When those stakeholders are part of that board, it can then be reported back.

Would you be open to the idea that instead of the privacy commissioner being the one you would get turned to, that participation takes place within the group we're talking about and then go to cabinet. Or is it still more preferable, in your opinion, to go straight to the Solicitor General, hoping that conversation will take place?

**Mr Adkin:** Our opinion—and we go beyond the line of hoping it would take place; we'd go along the line with it “shall” take place or it “must” take place—would be that you could deal with it and go directly to the Solicitor General.

**Mr Levac:** And then the Solicitor General would be expected to put it to cabinet?

**Mr Adkin:** The Solicitor General would be expected to put it to cabinet or come back with legislation or a policy regulation, whatever he would see fit.

**Mr Levac:** You believe there is a provincial level for a lot of this information and a lot of the things that are happening in the provincial government that can be dealt with at the provincial level?

**Mr Adkin:** Yes, I do.

**Mr Mazzilli:** Thank you, Mr Adkin. This is one that certainly we want to get done. The big problem with this legislation is that, first of all, we start with who's not represented out of the groups, and we're already starting to hear that. But there are some obvious things that need to be done. They can be done by regulation or legislation, certainly, for police officers, correctional officers, probation officers and judges. Then there needs to be a

system to include others, because the others are the ones this committee, in my view, will never figure out who they all are at the present time. There may be a way. You may get a reporter who may be part of the system, someone who continually reports on crime issues, that there be a mechanism that they be included.

I support the concept of protection of private information for police officers, probation officers and correctional officers. Is it your view that most of the information we've heard of through the media has been in relation to drivers' licences and vehicle ownership? Does that seem to be the bulk of the concern?

**Mr Adkin:** That seems to be the bulk, Mr Mazzilli, yes.

**The Acting Chair:** Thank you very much for coming in this afternoon, Mr Adkin.

We will now go to clause-by-clause consideration of Bill 27, An Act to protect the families of police officers and others involved in the criminal justice system.

Mr Levac, I understand you have—

**Mr Levac:** On section 2.

**The Acting Chair:** —submitted a couple of amendments and we'll deal with those as we go through.

We'll turn to section 1. Any debate on section 1?

**Mr Mazzilli:** On a point of order, Madam Chair: I would like to take a recorded vote on the entire piece of legislation rather than going clause-by-clause. I make that motion to take a vote on whether this is going through this committee as an entire piece of legislation.

**The Acting Chair:** What you're saying is that you want to go through it clause-by-clause with no debate? Because in clause-by-clause, what we would normally do is go through section by section. We do have a couple of amendments. We would put it to debate.

**Mr Mazzilli:** Could we debate the entire bill, then, rather than debating clause-by-clause? This is my submission, Madam Chair. If there is a deficiency with the entire bill, is there any purpose in debating clause-by-clause?

**Mr Levac:** Absolutely, if you put an amendment in. You know we're going to move an amendment.

**The Acting Chair:** Normally when we go through the sections, general debate would take place, especially when I call section 1, Mr Mazzilli. Perhaps that's the time you should take to debate this.

**Mr Mazzilli:** I will.

1730

**The Acting Chair:** I should advise, of course, that we have a vote this evening. The bells will start ringing at about 10 minutes to 6, so we'll have to be out of here by about five to 6. I would caution all members to please take that into consideration as we're going through this clause-by-clause.

Do we have any debate on section 1?

**Mr Mazzilli:** This is a position I want to take for police officers, correctional officers and everyone else. We talked about personal information. We have now talked about information of drivers' licences and ownership of vehicles, and we somehow start entrenching that

in more provincial legislation. I agree with the stakeholders who have come before this committee that now you've made a separate category that possibly reports that personal information to this Legislature. So I would object to that section.

**The Acting Chair:** Shall section 1 carry? Recorded vote. All in favour?

**Mr Crozier:** Madam Chair, who requested the recorded vote? I didn't hear it before the vote.

**The Acting Chair:** Mr Mazzilli did ask that—

**Mr Crozier:** He asked it for the whole bill, but don't you have to ask for a recorded vote prior to the vote?

**Mr Mazzilli:** I want to ask for a recorded vote, Madam Chair.

**The Acting Chair:** It was my understanding, Mr Crozier, that he was asking for a recorded vote. Is that OK? Mr Mazzilli?

**Mr Mazzilli:** I would ask for a recorded vote.

#### Ayes

Crozier, Levac.

#### Nays

Chudleigh, Mazzilli, Spina.

**The Acting Chair:** Section 2.

**Mr Levac:** I move that clause 2(2)(b) of the bill be amended by striking out "Legislative Assembly" and substituting "executive council."

**The Acting Chair:** Shall the amendment carry?

**Mr Levac:** I would like to speak to the—

**The Acting Chair:** Sorry, I should have asked if there was debate first.

**Mr Levac:** In speaking to the amendment, I'd like to point out very clearly that after receiving legislative counsel research, as well as what we've heard from the vast majority of the presenters, the creation of the board is acceptable. This clause works us toward the concerns that were raised by some of those stakeholders. By doing so, we removed that bane of privacy that was considered to be loose, and this tightens it up. Legislative counsel registered that they would not be subject to FIPPA, which is the Freedom of Information and Protection of Privacy Act, and that by doing so we would remove the concerns that were raised by some of the stakeholders, and it does not remove one stakeholder's concern. I would request respectfully that it be accepted as presented.

**The Acting Chair:** Did I hear a request for someone to continue to debate?

**Mr Dunlop:** Madam Chair, could I ask for a recess for two or three minutes, or a five-minute recess?

**The Acting Chair:** How many minutes?

**Mr Dunlop:** I'll say five minutes. It's just something we want to caucus on.

**The Acting Chair:** You do appreciate that there's a vote tonight?

**Mr Dunlop:** I understand that, but we'll be very quick.

**The Acting Chair:** All right, that's fine.

*The committee recessed from 1735 to 1738.*

**The Acting Chair:** We'll call the meeting to order. We were at section 2. Mr Mazzilli.

**Mr Mazzilli:** What we heard from the stakeholders today is not who the bill reports to—the Speaker or cabinet or otherwise. What they're saying is that there is certain information they want prevented from being general information, as you could get anyone else's information, not who you report it to.

The amendments that are proposed here go against anything I heard police officers say today before this committee. They talked about how you can get personal information based on vehicle ownership, through a licence number and sometimes through other means. That's all they've ever said, and they want to prevent that.

I have said and the Solicitor General has said he is going to deal with that. We need to deal with that. It's not an issue of amendments or what it's going to look like. This is an issue that will be dealt with, and these amendments do not serve any purpose in this legislation.

**Mr Crozier:** Just very quickly, with all due respect, this doesn't just involve police officers. For the most part, that's all I've heard Mr Mazzilli talk about. It goes beyond that, as witnesses attested to. In fact, witnesses did say that they felt the Criminal Justice Privacy Board was the right thing to do. I heard a couple say it wasn't, but the majority said it was, and it goes far beyond police officers. I just wanted to make that point.

**The Acting Chair:** Further debate? Members of committee, if you wish a recorded vote, I would ask that you request it for the vote on each clause. Do you wish a recorded vote, Mr Mazzilli, on the amendment?

**Mr Levac:** This time I do, Madam Chair.

**The Acting Chair:** All in favour of Liberal amendment number 1, which is on clause 2(2)(b)?

#### Ayes

Crozier, Levac.

#### Nays

Chudleigh, Dunlop, Mazzilli, Spina.

**The Acting Chair:** Shall section 2 carry?

**Mr Levac:** Recorded vote.

#### Ayes

Crozier, Levac.

#### Nays

Chudleigh, Dunlop, Mazzilli, Spina.

**The Acting Chair:** Shall section 3 carry?

**Mr Mazzilli:** Madam Chair, with consent, could we deal with sections 3, 4 and 5, because without sections 1 and 2, sections 3, 4 and 5 become somewhat irrelevant.

**The Acting Chair:** Except that we have an amendment for section 4, so we would have to deal with that amendment. We'll deal with section 3, go to 4 and deal with the amendment to 4 and, then, if you wish to collapse the rest of the sections, you can do that, but I think we should deal with section 3 first.

**Mr Levac:** Recorded vote on section 3, please.

**The Acting Chair:** Shall section 3 carry?

#### Ayes

Crozier, Levac.

#### Nays

Chudleigh, Dunlop, Mazzilli.

**The Acting Chair:** That does not carry.  
Section 4.

**Mr Levac:** I move that subsection 4(1) of the bill be struck out and the following substituted:

"Annual report

"(1) Each year, the board shall give a report to the executive council about the affairs of the board."

**The Acting Chair:** Any debate?

**Mr Levac:** It's the same as the previous statement I made, so to further expedite our time I would ask for a recorded vote.

**Mr Mazzilli:** I have some debate on the issue. As I reiterated before, what we heard from stakeholders is not who the board reports to but it's the fact that this board has personal information; one more government agency with personal information that can be distributed. That's not what our stakeholders have asked for here.

In other sections here, some stakeholders were left out. We heard the crown attorneys' association. I'm not prepared to vote with stakeholders being left out. That's what we have here in this bill. Some stakeholders have been left out.

What we've proposed is that those stakeholders sit around the table with the Solicitor General and come up with a well-thought-out methodology on coming up with legislation or regulation on how to prevent the general public and the criminal element from obtaining personal information about people involved in the justice field. The Solicitor General is involved in that.

This side of this committee is not prepared to support any of these sections with possible important stakeholders being left out. We can go on with the recorded vote.

**Mr Levac:** Just a comment, in case Mr Mazzilli didn't read the bill. Subsection 2(4) says:

"Additional persons

"The board may appoint other persons to sit on the board or to assist the board in its duties."

I just thought I'd point that out.

**Mr Mazzilli:** Is there a maximum makeup of the board? There are all kinds of things that have not been addressed and we on this side of the committee are not prepared to go ahead with any of those unknowns. It would just make it a bureaucratic nightmare for this sort of legislation to work.

We will come up with meaningful legislation that will be, in effect, very simple and will protect the people involved in the justice field. As for threats and assaults and so on, they are criminal offences and I wish the provincial Liberals would join in and pressure the federal Liberals into toughening up the Criminal Code on behalf of all the people working in the justice field in Ontario.

**Mr Crozier:** Just a quick comment, Chair. Had Mr Mazzilli said this before, it would have saved us a lot of time. If what the government really wants to do is take Mr Levac's bill and make it their own, we're quite pleased to do this. We could have saved ourselves a lot of time.

**Mr Mazzilli:** Yes, that is what would have happened, a well-thought-out bill for—

**The Acting Chair:** I think we're getting beyond the debate now. We'll go back to Liberal motion number 2, which is subsection 4(1) of the bill. Shall the amendment carry? Did you wish a recorded vote, Mr Levac?

**Mr Levac:** It was requested.

#### Ayes

Crozier, Levac.

#### Nays

Chudleigh, Dunlop, Mazzilli.

**The Acting Chair:** Shall section 4 carry?

**Mr Levac:** Recorded vote, please.

#### Ayes

Crozier, Levac.

#### Nays

Chudleigh, Dunlop, Mazzilli.

**The Acting Chair:** We can do 5 and 6 together, if that's the wish of committee. Shall sections 5 and 6 carry?

**Mr Levac:** Recorded vote, please.

#### Ayes

Crozier, Levac.

#### Nays

Chudleigh, Dunlop, Mazzilli.

**The Acting Chair:** Shall the title of the bill carry?

**Mr Levac:** Recorded vote.

**Ayes**

Crozier, Levac.

**Nays**

Chudleigh, Dunlop, Mazzilli.

**The Acting Chair:** Shall Bill 27 carry?

**Mr Crozier:** Just a comment. I just have to get this on the record, because I think I heard Mr Mazzilli, during the questioning, say they supported the concept. It appears to me today by this—I won't say unusual, but not normal—chain of events that perhaps the government side would still like to at least put on the record that they support the concept.

**Mr Mazzilli:** I certainly would, Madam Chair. I'd be prepared to say that. I don't know how much more clearly I could have said it all day to the stakeholders. This is the problem with playing politics on something that occurred in Quebec, coming up with a piece of legislation that forms an entire bureaucratic board to prevent obtaining personal information, for example driver's licence and vehicle information. That's what we want to prevent for people involved in the justice field. Certainly the stories we heard from our stakeholders today were that it was a very minor portion of what they deal with every day. Most of what they deal with are surveillance and Criminal Code offences, and the ones they deal with are things that ought to be Criminal Code offences.

So what do we get? That to prevent the general public and the criminal element from obtaining people's information on vehicles and driver's licences, somehow we have to create an entire board. Certainly on this side of the committee we don't see that, but we support the concept that that information ought to and should be guarded, which can be done through regulation or some type of legislation, without the formation of this very bureaucratic board. Yes, you do have the commitment that I will push for that.

**Mr Levac:** Just a general comment about the substance of the bill. I would compliment Mr Mazzilli on playing his role very well. I would also compliment the stakeholders who presented to us and those I've been in

contact with for quite some time for indicating their deep concern about this issue. Contrary to what Mr Mazzilli has been trying to portray all evening, they went well beyond the Ministry of Transportation; they even mentioned the Red Tape Commission, and I would name eight other ministries that were mentioned. The fact that he's trying to portray it simply as a driver's licence issue is an insult to those people who have been coming before the board to present their deep, deep concerns about this very serious problem. To portray it as such betrays the trust they're placing in this legislative committee and the Legislature to ensure that their best interests are looked after. I appreciate your time.

**The Acting Chair:** Then I put the question. Shall Bill 27 carry? Do you wish a recorded vote?

**Mr Levac:** Recorded vote, please.

**Ayes**

Crozier, Levac.

**Nays**

Chudleigh, Dunlop, Mazzilli.

**The Acting Chair:** Shall I report the bill to the House?

**Mr Levac:** Recorded vote.

*Interjection.*

**The Acting Chair:** It doesn't matter. If it's a recorded vote request, you all have to either vote for it or against it. All in favour?

**Ayes**

Chudleigh, Dunlop, Mazzilli, Spina.

**Nays**

Crozier, Levac.

**The Acting Chair:** This meeting is adjourned.  
*The committee adjourned at 1751.*







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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 27 June 2001

# Journal des débats (Hansard)

Mercredi 27 juin 2001

## Standing committee on general government

Government Efficiency Act, 2001

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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Wednesday 27 June 2001

*The committee met at 1602 in committee room 1.*

## GOVERNMENT EFFICIENCY ACT, 2001

LOI DE 2001 SUR L'EFFICIENCE  
DU GOUVERNEMENT

Consideration of Bill 57, An Act to promote government efficiency and to improve services to taxpayers by amending or repealing certain Acts / Projet de loi 57, Loi visant à favoriser l'efficacité du gouvernement et à améliorer les services aux contribuables en modifiant ou en abrogeant certaines lois.

**The Chair (Mr Steve Gilchrist):** Good afternoon. I'll call the committee to order for the purpose of clause-by-clause consideration and debate of Bill 57, an Act to promote government efficiency and to improve services to taxpayers by amending or repealing certain acts. To those folks who have joined us here today, my apologies for the delay, but the standing orders do not allow us to start committee work while what are called the routine proceedings of the House are still underway.

Having said that, we will start the proceedings by asking if there is any debate or amendments to section 1 of the act.

**Mr Peter Kormos (Niagara Centre):** It's obviously to our great disappointment that the bill has been time-allocated at all, and certainly in the manner that it has been. As you know, buried in this omnibus bill are provisions which, beyond merely eroding, seriously assault workers' rights in the workplace.

The amendments, which are effectively repeals of any number of sections of the Occupational Health and Safety Act, put workers at risk, endanger their lives and will, we believe—and so do working women and men across this province—increase the numbers of workers slaughtered in the workplace.

We do not support Bill 57 because of the inclusion of those amendments by way of repealing provisions of the Occupational Health and Safety Act. I wanted to put that on the record at the onset.

**The Chair:** Any further debate? Seeing none, I'll put the question. All those in favour of section 1? Contrary? Section 1 is carried.

Section 2: Any debate or amendments to section 2? Seeing none, I'll put the question. All those in favour of section 2? Opposed? Section 2 is carried.

Section 3: Any debate or amendments?

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Mercredi 27 juin 2001

**Mr Joseph Spina (Brampton Centre):** On a point of order, Mr Chair: You're moving fairly quickly and I just want to make sure that you will bring to the attention of the committee members when there is an amendment.

**The Chair:** Yes, sir, I will.

**Mr Spina:** Thank you, sir. Proceed.

**The Chair:** Seeing no debate, all those in favour of section 3? Opposed? Section 3 is carried.

Schedule A, sections 1 and 2:

Are there any amendments or debate to schedule A? All those in favour? Opposed? Schedule A is carried.

Schedule B, which has sections 1 to 14:

Any amendments or debate? Seeing none, all those in favour? Opposed? Schedule B, sections 1 to 14, are carried.

Schedule C, section 1: Mr Kormos.

**Mr Kormos:** Proceed with section 1. I'll speak to section 2.

**The Chair:** Any debate or amendment to section 1? Seeing none, all those in favour? Opposed? Section 1 is carried.

Section 2: Perhaps I will start things, Mr Kormos, in the absence of the Liberal members of the committee, to indicate that the first amendment you have in your packet, a Liberal motion marked number 1, is out of order. As members of the committee will know, if you want to delete a section of an act, you simply vote against it, so that amendment is out of order.

Are there any further amendments or debate on section 2?

**Mr Kormos:** Again, New Democrats want to indicate that we very specifically oppose section 2. It has a tremendous impact on what have historically been arbitration rights for a select group of working people, people who primarily work directly with other persons, including persons with disabilities and other challenged people. We see this quite clearly as an attack on the dispute mechanism that's been made available to them, under the guise of restoring the right to strike, but then denying them the arbitration access that they had historically.

So I would ask for a recorded vote on section 2, please.

**The Chair:** Is there any further debate on section 2? Seeing none, Mr Kormos has asked for a recorded vote.

*Interjection.*

**The Chair:** In their absence, there has been no one introducing any other amendment, so seeing no further debate, all those in favour of schedule C, section 2?

**Ayes**

Arnott, Chudleigh, Spina.

**Nays**

Kormos

**The Chair:** Schedule C, section 2 is carried.

Schedule C, section 3: Any debate? Seeing none—

**Mr Kormos:** Recorded vote.

**Ayes**

Arnott, Chudleigh, Spina

**Nays**

Kormos

**The Chair:** Schedule C, section 3 is carried.

*Interjection.*

**The Chair:** We had actually waited a considerable amount of time, Mr Agostino, and I must indicate to you, we've actually passed the point of the first Liberal amendment that had been proposed. If you wish, you could ask the committee for unanimous agreement to reopen schedule C, section 2, but I can tell you that that section has already passed unamended.

**Mr Dominic Agostino (Hamilton East):** Passed means approved?

**The Chair:** Approved, yes.

**Mr Agostino:** That's fine. Keep going.

**The Chair:** Schedule D, sections 1 through 16:

Are there any amendments or debate to Schedule D? Seeing none, I'll put the question. All those in favour of schedule D, sections 1 through 16? Opposed? Schedule D, sections 1 through 16, are carried.

1610

Schedule E, sections 1 and 2:

Is there any debate or amendment? Seeing none, all those in favour of schedule E, sections 1 and 2? Opposed? That is carried.

Schedule F, section 1:

Any debate or amendments to section 1 of schedule F?

**Mr Spina:** Is this amendment—

**The Chair:** There's an amendment to section 2. There's nothing on section 1 that has been tabled.

All those in favour of section 1? Opposed? Schedule F, section 1 is carried.

Schedule F, section 2.

**Mr Spina:** I move that subsection 125.2(1) of the Ontario Energy Board Act, 1998, as set out in subsection 2(5) of schedule F to the bill, be amended by striking out "rules of the board made under clause 44(1)(c) governing

the conduct of persons holding a licence issued under part IV" and substituting "rules of the board made under part III."

**The Chair:** Do you wish to speak to the amendment?

**Mr Spina:** This is important because it'll provide more of a level playing field with the regulation between natural gas and electricity utilities. With this amendment, any player in the market—natural gas and the electricity industry—regulated by the OEB is subject to penalties if they don't have licences and other elements like that.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is carried.

Any further debate on schedule F, section 2? Seeing none, I'll put the question. Shall schedule F, section 2, as amended, carry? It is carried.

Schedule F, section 3: any debate or amendments? Seeing none, all those in favour? Opposed? Schedule F, section 3 is carried.

Since we amended schedule F, shall schedule F, as amended, carry? All in favour? Opposed? It is carried.

Schedule G, sections 1 through 8:

Any debate or amendments? Seeing none, I'll put the question. All those in favour of schedule G, sections 1 through 8? Schedule G, sections 1 through 8, is carried.

Schedule H, sections 1 and 2:

Any debate? All those in favour? Opposed? Schedule H, sections 1 and 2, is carried.

Schedule I.

**Mr Spina:** I move that section 1 of schedule I of the bill be amended by adding the following subsection:

"(30.1) Section 141 of the act is amended by adding the following subsection:

"Regulations re part XXII

"(3.1) A regulation prescribing penalties for contraventions for the purposes of subsection 113(1) may,

"(a) provide for greater penalties for the second contravention and for the third or subsequent contravention of a provision of the act in a three-year period or in such other period as may be prescribed;

"(b) provide that the penalty for a contravention is the prescribed amount multiplied by the number of employees affected by the contravention."

**The Chair:** Do you wish to speak to the amendment?

**Mr Spina:** I think it stands for itself.

**Mr Kormos:** I don't think it speaks for itself. I'd like to hear the mover explain the amendment.

**Mr Spina:** What you'd like and what you're going to get may be two different things.

**Mr Kormos:** Don't move amendments you don't understand.

**Mr Spina:** All right. This enables the government to implement the desired scheme of basically escalating penalties for notices of contravention without risk of a successful challenge. We are proposing that the ESA, 2000 part of the Ministry of Labour's schedule in Bill 57 is amended. What this will do is give specific authority to make the regulation providing for such a scheme. As both the notice of contravention section and the

regulation-making authority section are already being opened by the bill, it's likely that such a committee-stage amendment would not be ruled out of order. Basically what we want to do is beef up the subsequent violations that increase the penalties, basically, for additional contraventions when they take place.

**Mr Kormos:** What's magic about the three-year period? Why three years? Why have you basically capped the time frame in which antecedent convictions can be referred to?

**Mrs Margaret Marland (Mississauga South):** Just like you proposed when you were the government.

**Interjection:** What would you suggest?

**Mr Kormos:** The parliamentary assistant, I'm sure, will be pleased to answer.

**Mrs Marland:** Just the way you did when you were a PA?

**Mr Spina:** The question was why the three-year time frame?

**Mr Kormos:** Yes, sir.

**The Chair:** Do you have a staff member who might have information for you, Mr Spina?

**Mr Spina:** Fundamentally, it was felt that if an employer had a clean record for three years, they could basically start over again. That was the logic behind that.

**Mr Kormos:** Thank you.

**The Chair:** Any further debate? Seeing none, I'll put the question on the amendment. All those in favour? Opposed? The amendment is carried.

**Mr Agostino:** Very quickly, I've got a point of order. If I—

**The Chair:** Let me just finish the vote on that section, if I might, Mr Agostino.

Schedule I, section 1, as amended: All those in favour? Opposed? Schedule I, section 1, as amended, is carried.

**Mr Agostino:** If I could ask for unanimous consent to very quickly go back to that section, Liberal motion number 2. We'll be very brief on it, but just if I could get it on the record in this committee.

**The Chair:** Mr Agostino has asked for unanimous consent that we revert to—

**Mr Ted Arnott (Waterloo-Wellington):** What do you mean go back to it?

**Mr Agostino:** We have to go back and move it now because it wasn't moved earlier.

**The Chair:** To have further discussion and to allow him to table the amendment. He missed that. So we're reopening schedule C.

**Mr Spina:** Could I ask a question on that? Was this the amendment that was out of order?

**The Chair:** No. That was amendment number 1. This would be amendment number 2.

**Mr Spina:** That was the first one. The second one was defeated in their absence.

**The Chair:** No, it wasn't tabled. It has not been discussed.

Is there unanimous agreement? There is.

**Mr Agostino:** Just very quickly, what this amendment does is it proposes that agencies receiving funding from Comsoc who are currently under the HLDAA should remain there. This could imply that no other agencies may apply to settle disputes under this, but at least other agencies, approximately 16 to 20, by the change would remain as essential workers.

That's basically the explanation for this. It would only affect the people who are in those categories. Basically it was proposed by a number of organizations and very strongly supported, among others, by the Brantwood Residential Development Centre of Brantford. It was sent to Mr Levac. The chair of the board, Alayne Sokoloski, and the executive director are both very strongly in favour of this.

1620

**The Chair:** Interesting debate, but you never did move your amendment.

**Mr Agostino:** I move the motion.

**The Chair:** You have to read it into the record.

**Mr Agostino:** I'm trying to go quickly.

I move that section 3 of the Hospital Labour Disputes Arbitration Act, as set out in subsection 2(2) of schedule C to the bill, be amended by adding the following subsection:

"Exception

"(3.1) Despite subsection (3), subsection (1) and sections 4 to 17 continue to apply to the hospital employees, trade unions, councils of trade unions and employers referred to in subsection (3) if the employer provided services funded under the Developmental Services Act on the day before the Government Efficiency Act, 2001, receives royal assent."

**The Chair:** All those in favour of the amendment?

**Mr Kormos:** Recorded vote, please.

**Ayes**

Agostino, Bountrogianni, Kormos.

**Nays**

Arnott, Chudleigh, Marland, Spina.

**The Chair:** The amendment fails.

We will go back to schedule I, section 2. Any debate or amendments?

Seeing none, I'll put the question on schedule I, section 2. All those in favour? Opposed? Schedule I, section 2 is carried.

Schedule I, section 3.

**Mr Agostino:** I move that subsection 3(6) to schedule I of the bill be struck out.

**The Chair:** Do you wish to speak to that?

**Mr Agostino:** Bill 57 proposes to remove section 34 of the Occupational Health and Safety Act. The section 34 requires notification to the director of health and safety when new chemicals or biological substances are introduced in the workplace. This notification is also

required under Environment Canada. The government believes that's a duplication. We believe this is more of a safeguard.

We were told at the briefing that at this point there is no agreement between the provincial government and Environment Canada in regard to this automatic notification. In view of that, we think it is safer to keep the provision in until an agreement is struck between the two parties so we can guarantee there is proper notification under the section of the Occupational Health and Safety Act. There is no agreement at this point. We were told that at the briefing by the ministry staff.

**The Chair:** Further debate?

**Mr Kormos:** Quite frankly, in view of the fact that the time allocation motion only gives us until 4:30, which means five more minutes, there has been 30 minutes of clause-by-clause consideration of an omnibus bill which contains, as I indicated in my very brief opening comments in the interest of saving time, schedule I and the withdrawal of arbitration rights to human services workers earlier on.

Working people out there are very angry about this bill. They are angry about the haste with which it was rammed through the Legislature. They're angry about the lack of consultation with them by the Minister of Labour. They're angry and frustrated by the fact that their efforts to seek the ear of government backbenchers were similarly frustrated by those government backbenchers not being available even to their own constituents.

The message has been delivered by the Ontario Federation of Labour, with respect to what Bill 57 is going to do, how they respond to issues around workplace safety. Sid Ryan and Brian O'Keefe of the Canadian Union of Public Employees have similarly stated that they will be responding by way of what they called direct action.

This is putting workers into a situation where they once again, like it was so many years ago, have to fight themselves for their lives, for their well-being, for their safety. I don't think any of us should be shocked or disappointed—least of all, disappointed—when, in a workplace refusal of unsafe work situation, you don't see just one worker relying on a telephone exchange between his boss and an absent inspector, but you see the whole workplace literally shut down, every worker in that workplace dropping their tools and simply either sitting down or walking to the perimeter.

It was interesting, yesterday, that it was awfully hot and humid in the House, and the Speaker mentioned in a private conversation that those might not be the most productive workplace conditions to work under. I said, "Yes. Call an inspector, under Bill 57, and his reply will be, 'It doesn't sound very hot in there.'" A lockout device that doesn't work on a piece of equipment or machinery, a piece of equipment or machinery that kills people—again, an inspector, however many kilometres or miles away, can say over the telephone, "It doesn't sound very unsafe."

The denial to workers of the right to have an on-site inspection by a Ministry of Labour inspector is egregious and it's dangerous. The repeal of sections 34 and 36 is dangerous not only for workers on that work site but quite frankly for emergency personnel, be it firefighters or paramedics, who have to attend at that work site and won't have available to them inventories of hazardous materials, chemicals etc on the site.

This government has declared war on the trade union movement and on workers in general. I anticipate that we will see dramatic and obstructive responses, all be they lawful, on the part of working people. I for one will be pleased and proud to join them, whether it's on their factory floor or outside their factory gate, whether it's in the streets of this or any other city or whether it's in the hallways of this Parliament or in the galleries of the chamber.

**Mr Agostino:** Just to follow what Mr Kormos said, when you look at this bill I think this is a very dangerous move by this government. Very clearly you've got a situation now where the workers have to have some faith and reliance that the government of Ontario and the Ministry of Labour will protect them from unsafe working conditions.

There have been very few examples given of frivolous requests. The vast majority have been upheld. The work orders have been significantly more than the calls—the stoppages much more than the calls or complaints that have come in. So there is really no need to do this unless it's another cost-saving measure by the government of Ontario to cut inspectors. The last time we saw cost-saving measures by the government of Ontario—we're in the middle of a public inquiry after seven deaths.

This is going to increase the danger to working people. All the minister was able to do was give one example. All they had was some trivial example of a phone call that was made, and that's the only rationale you seem to have for this. I think it's dangerous, and I think you're putting lives at risk. I think you're going to increase injuries, and you're putting a lot of good, hard-working people through unnecessary dangers simply to save a few bucks. I hope we don't come back here and talk about increased deaths and workplace injuries as a result of this move. Unfortunately, I think we will. You have abandoned working people when it comes to this.

It's simple protection I think any of us would expect our loved ones, our families, to have in the workplace, where they can pick up the phone, an inspector can look at the site and guarantee the site they're working on is safe. In this day and age, if we can't even give that assurance to the people of Ontario, I think that is a disgraceful move by this government with this bill, and I think there will be a heavy price to pay. Unfortunately, it will be the working men and women out there who are going to pay that price.

**The Chair:** With that, it is 4:30 and according to the order of the House under which we are operating, all amendments that have not been moved will be deemed to have been moved.

We will start with the one that is on the table now; that is, Liberal motion number 5, which Mr Agostino moved. All those in favour?

**Mr Kormos:** Recorded vote.

### Ayes

Agostino, Bountrogianni, Kormos.

### Nays

Arnott, Chudleigh, Marland, Spina.

**The Chair:** That amendment is lost. The next amendment is number 6.

**Mr Agostino:** Mr Chair—

**The Chair:** Sorry, there is no further debate.

**Mr Agostino:** On a point of order, Chair.

**The Chair:** There isn't really one, but I will indulge just this—

**Mr Agostino:** Thank you. We went through it the other time. Is it possible to simply request that the amendments be read out before they're voted on?

**The Chair:** No, but I will read the title for the purposes of Hansard.

**Mr Agostino:** I want to question that, because we went through this the other day at committee. We had a request from Mr Kormos, and the ruling was that the motions could be read out—not debated but simply read out—before they're voted on.

1630

**The Chair:** The problem is, I can't speak to any time allocation that another committee has operated under. The wording is very specific here. They are deemed to have been moved. That means as if they had already been read into the record.

For the purposes of Hansard, the clerk has suggested that I read the title so we know which one we are voting on, but I'm afraid the order of the House is quite clear.

**Mr Agostino:** On the same point of order, Chair: The Chair sitting where you are last week ruled the exact opposite of what you just ruled, in consultation with the clerk and in consultation with the clerk's office, and he read into the record the amendments that were proposed.

**The Chair:** Well, I must tell you that in five years of being a clerk—sorry, a Chair—I've never received such advice from a clerk. I'm not questioning the advice another clerk gave to another Chair, but obviously each of us is operating under specific orders of the House. So I am inclined to go with the advice I have received from Ms Stokes.

**Mr Kormos:** Were those five clerking years when you were with Canadian Tire?

**The Chair:** Oh, many more clerking years there, Mr Kormos—25.

**Mr Spina:** On a point of order, Mr Chair: Would Mr Agostino's request be able to be done by unanimous consent, with your advice?

**The Chair:** I would accept such a motion.

**Mr Agostino:** I move unanimous consent that the amendments simply be read into the record before they're voted on.

**The Chair:** Agreed? Agreed.

**Mrs Marland:** Just a point of clarification, though, Mr Chair. What happens if we still run out of time going through the process of reading them into the record?

**The Chair:** There are actually only three more amendments to read.

**Mrs Marland:** Of the Liberals?

**The Chair:** Yes, and in fact the order of the House allowed us to sit beyond 6 o'clock. So that would not pose a problem.

**Mrs Marland:** OK. Thank you.

**The Chair:** I, however, will do the reading.

"I move that subsection 43(7) of the Occupational Health and Safety Act, as set out in subsection 3(11) of schedule I to the bill, be amended by striking out 'in consultation with' and substituting 'in the presence of'."

All those in favour of this amendment?

**Mr Kormos:** Recorded vote.

### Ayes

Agostino, Bountrogianni, Kormos.

### Nays

Arnott, Chudleigh, Marland, Spina.

**The Chair:** That amendment is lost.

The next amendment is marked number 7 in your packet:

"I move that clause 57(10)(b) of the Occupational Health and Safety Act, as set out in subsection 3(13) of schedule I to the bill, be struck out and the following substituted:

"(b) if the order or report resulted from a complaint of a contravention of this act or the regulations, the inspector shall cause a copy of the order or report to be furnished to the person who made the complaint'."

All those in favour of the amendment?

**Mr Kormos:** Recorded vote.

### Ayes

Agostino, Bountrogianni, Kormos.

### Nays

Arnott, Chudleigh, Marland, Spina.

**The Chair:** That amendment is lost. Shall schedule I, section 3, carry?

**Mr Kormos:** Recorded vote.

### Ayes

Arnott, Chudleigh, Marland, Spina.

**Nays**

Agostino, Bountrogianni, Kormos.

**The Chair:** Schedule I, section 3, is carried.

Schedule I, sections 4 and 5:

All those in favour?

**Mr Kormos:** Recorded vote, please.

**Ayes**

Arnott, Chudleigh, Marland, Spina.

**Nays**

Agostino, Bountrogianni, Kormos.

**The Chair:** Schedule I, sections 4 and 5, are carried.

Shall schedule I, as amended, carry?

**Mr Kormos:** Recorded vote, please.

**Ayes**

Arnott, Chudleigh, Marland, Spina.

**Nays**

Agostino, Bountrogianni, Kormos.

**The Chair:** Schedule I, as amended, is carried.

Schedule J, sections 1 and 2:

All those in favour?

**Ayes**

Arnott, Chudleigh, Marland, Spina.

**The Chair:** He didn't even ask for a recorded vote. That's OK. We might as well continue.

**Nays**

Agostino, Bountrogianni, Kormos.

**The Chair:** Those sections carry.

That takes us to the amendment marked number 8 in your package.

**Mr Arnott:** On a point of order, Mr Chair: I want to indicate that this is the amendment I intended to move. I know it's going to be deemed to have been moved. We're bringing this forward on behalf of the region of Waterloo.

**The Chair:** Thank you very much.

"I move that section 3 of schedule J of the bill be struck out and the following substituted:

"3. Subsection 34(13) of the Regional Municipalities Act, as re-enacted by the Statutes of Ontario, 2000, chapter 5, section 21 is amended by inserting, "Niagara, Peel, Waterloo" after "Halton"."

All those in favour? Opposed? That amendment is carried.

Shall schedule J, section 3, carry? That is carried.

Shall schedule J, sections 4 and 5, carry? That is carried.

Shall schedule J, as amended, carry? It is carried.

Schedule K, sections 1 through 6:

All those in favour? Opposed?

Schedule K, sections 1 through 6, is carried.

Schedule L, sections 1 through 7:

All those in favour? Opposed?

Schedule L, sections 1 through 7, is carried.

Schedule M, sections 1 and 2:

All those in favour? Opposed?

Schedule M, sections 1 and 2, is carried.

Schedule N, sections 1 and 2:

All those in favour? Opposed?

Schedule N, sections 1 and 2, is carried.

Schedule O, sections 1 through 7:

All those in favour?

Schedule O, sections 1 through 7, is carried.

Shall the title of the bill carry?

**Mr Kormos:** Recorded vote, please.

**Ayes**

Arnott, Chudleigh, Marland, Spina.

**Nays**

Agostino, Bountrogianni, Kormos.

**The Chair:** The title of the bill is carried.

Shall Bill 57, as amended, carry?

**Mr Kormos:** Recorded vote.

**Ayes**

Arnott, Chudleigh, Marland, Spina.

**Nays**

Agostino, Bountrogianni, Kormos.

**The Chair:** Bill 57, as amended, is carried.

Shall I report the bill, as amended, to the House?

**Mr Kormos:** Recorded vote, please.

**Ayes**

Arnott, Chudleigh, Marland, Spina.

**Nays**

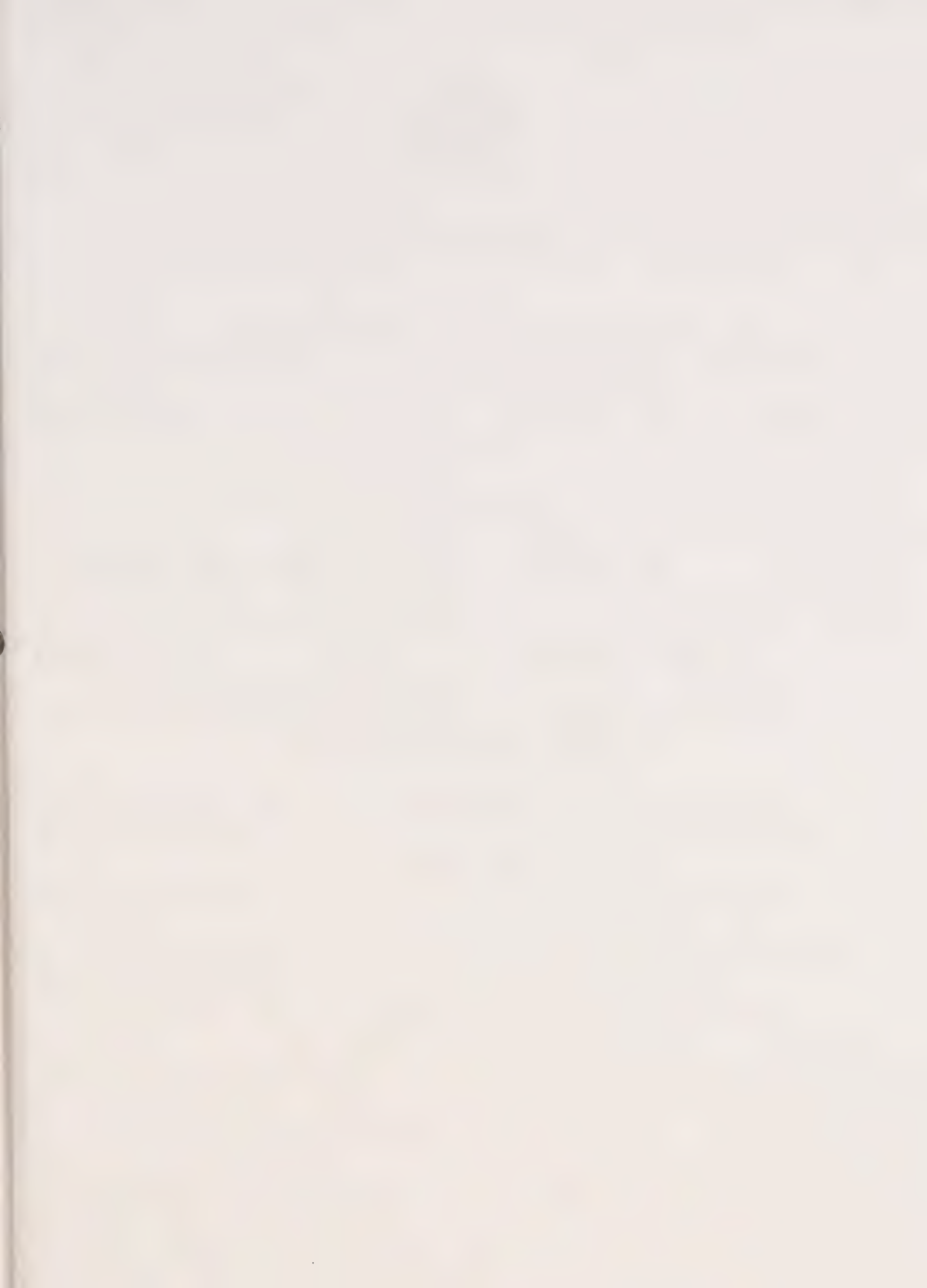
Agostino, Bountrogianni, Kormos.

**The Chair:** Thank you very much. I shall report the bill, as amended, to the House tomorrow. Thank you, members, for your participation. The committee stands adjourned.

*The committee adjourned at 1637.*







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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Friday 31 August 2001

# Journal des débats (Hansard)

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Chair: Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Friday 31 August 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Vendredi 31 août 2001

*The committee met at 0903 in committee room 1.*

**The Chair (Mr Steve Gilchrist):** Good morning. I'll call the committee to order as we undertake a joint hearing on two different bills: Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters; and Bill 90, An Act to promote the reduction, reuse and recycling of waste.

## SUBCOMMITTEE REPORT

**The Chair:** The first order of business is the report of the subcommittee. I wonder if I could get Mr Levac to read the report into the record, please.

**Mr Dave Levac (Brant):** Certainly, Mr Chairman.

Your subcommittee met on Thursday, August 16, 2001, to consider the method of proceeding on Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters, and on Bill 90, An Act to promote the reduction, reuse and recycling of waste.

(1) That the committee schedule public hearings in Toronto, Hamilton, Brantford and Windsor. The committee will meet on August 31, September 7, September 10, and if necessary on September 11 in the afternoon. The Chair, in consultation with the clerk, will determine which dates the committee will meet in which city.

(2) That videoconferencing may be used to hear witnesses' submissions if deemed appropriate.

(3) That groups be offered 20 minutes in which to make their presentations, and individuals be offered 10 minutes in which to make their presentations.

(4) That the Chair, in consultation with the clerk, make all decisions with respect to scheduling. The Chair and clerk will attempt to create a balanced set of hearings where all witnesses are scheduled. If all witnesses cannot be scheduled, an additional subcommittee meeting will be called to resolve the issue.

(5) That the subcommittee determine whether reasonable requests by witnesses to have their travel expenses paid will be granted.

(6) That there be no opening statements made by any party.

(7) That the minister should not make an opening presentation.

(8) That the research officer prepare a background paper containing relevant information from other jurisdictions as well as a summary of recommendations.

(9) That the committee commence its clause-by-clause consideration of the bills after the House comes back.

(10) That the clerk be authorized to begin implementing these decisions immediately.

(11) That the information contained in this subcommittee report may be given out to interested parties immediately.

(12) That the Chair, in consultation with the clerk, make any other decisions necessary with respect to the committee's consideration of the bills. The Chair will call another subcommittee meeting if needed.

**The Chair:** Thank you very much.

Mr Levac has moved adoption of the subcommittee report.

**Mr Ted Arnott (Waterloo-Wellington):** Just a general question: I don't mind working on a Friday. I had a whole day planned in my riding office today with appointments and I'm just subbed in today. I'm curious as to why we're sitting on a Friday.

**The Chair:** Quite simply because of conflicts with other committees: the new select committee on alternative fuels and the work of the Red Tape Commission and other committees. We had a very limited number of dates to choose from, and it wound up being these two or not until after the House came back. The minister had made it very clear that he wanted these hearings done over the summer, and hence the decision to meet today. I certainly say to all the members who weren't part of the subcommittee deliberations that we apologize for any inconvenience it has caused if you'd already booked other appointments, but we appreciate your being here today, and I think over the next two sitting days we'll be able to digest all—in fact, I know we have been able to schedule every single individual and group that requested time to speak on these two bills.

Thank you, Mr Arnott.

Any further debate? Seeing none, I'll put the question. All those in favour of the adoption of the subcommittee report? Opposed? It's carried.

BROWNFIELDS STATUTE LAW  
AMENDMENT ACT, 2001

LOI DE 2001 MODIFIANT DES LOIS  
EN CE QUI CONCERNE  
LES FRICHES CONTAMINÉES

WASTE DIVERSION ACT, 2001

LOI DE 2001 SUR LE  
RÉACHEMINEMENT DES DÉCHETS

Consideration of Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters / Projet de loi 56, Loi visant à encourager la revitalisation des terrains contaminés et apportant d'autres modifications se rapportant à des questions environnementales;

Bill 90, An Act to promote the reduction, reuse and recycling of waste / Projet de loi 90, Loi visant à promouvoir la réduction, la réutilisation et le recyclage des déchets.

ONTARIO HOME BUILDERS'  
ASSOCIATION

**The Chair:** We'll move into our first presentation. That will be from the Ontario Home Builders' Association. Good morning. Welcome to the committee. We have 20 minutes for your presentation. Perhaps you could introduce yourselves for the purposes of Hansard.

**Mr Wayne Dempsey:** Good morning, Mr Chairman and members of the general government committee. My name is Wayne Dempsey and I'm pleased to have this opportunity to speak with you today. With me this morning is Terry Kaufman, a builder from Toronto and a member of the Ontario Home Builders' Association board of directors. I am here as president of the Ontario Home Builders' Association and as a past president of the Muskoka Home Builders' Association. I also serve on the board of directors for the Ontario New Home Warranty Program. Through this and my 25 years of home building experience in both urban settings and more rural areas, I have acquired extensive first-hand experience regarding many issues affecting the housing industry. Having said all this, I would now like to state for the record that the Ontario Home Builders' Association supports the intent of Bill 56, and with a few modifications would fully support this important piece of legislation.

The Ontario Home Builders' Association represents 3,500 member companies and is the voice of the residential construction industry in Ontario. As with every industry, home building is predominantly made up of small firms with a small number of very large companies. While this proposed legislation is much needed and encouraged by the industry, to make brownfield redevelopment available to more than just the largest builders in the major urban centres, we would like to

recommend some adjustments to help this piece of legislation achieve its goals.

Redevelopment of Ontario's brownfield lands will result in substantial public benefits for the residents of the province. They will have the potential to make a significant contribution to meeting Ontario's growing housing needs and can play a key role in the policy of Smart Growth.

Ontario's population is expected to continue to grow at a robust pace—from approximately 11.5 million in 1999 to almost 15.4 million by 2028, according to projections prepared by the provincial Ministry of Finance. New homes are needed to house this growing population and in the year 2000 there were more than 71,000 new housing starts in Ontario. Accommodating this growth puts pressure on the province's agricultural lands and open spaces. Encouraging the redevelopment of more brownfield sites has the potential to make a significant contribution to meeting Ontario's housing needs and would help mitigate the pressure to urbanize our rural areas.

Many brownfield sites are located in the heart of established communities. A framework of infrastructure and public services is often already in place, allowing for very cost-effective development from a public perspective. Redeveloping these sites for new housing could help to revitalize older town centres by bringing in new residents and businesses, cleaning up contaminated sites and improving the image of ailing downtowns.

Providing new housing through the efficient use of now underutilized urban lands and the cost-effective use of existing infrastructure and public services is smart growth.

0910

**Mr Terry Kaufman:** Good morning, Mr Chair and members of the committee. My name is Terry Kaufman, a member of the board of directors of the Ontario Home Builders' Association. There are many examples where brownfield sites are being successfully redeveloped for new residential communities in select areas within Ontario. For example, Mattamy Homes is currently building the former site of an oil storage tank facility and sludge farm in Mississauga into an upscale residential community that will house 393 families at full buildout. The redevelopment of railway lands in downtown Toronto by Concord Adex will provide 7,000 new apartment units when completed. I am presently building a project in the west end of Toronto backing on to the CN rail lands. An old spur line by the CP line as well is there. We are building 35 units as an affordable housing community. I can only see this growing in leaps and bounds because of all the industrial areas that are vacant now where railway lands are abutting. So it's a prime opportunity for us to step in and try and build out these sites throughout all the centres in Ontario.

In these cases, the local real estate market was strong enough to generate sufficient returns to justify the costs and risks associated with brownfield redevelopment, and site contamination problems proved to be manageable.

However, there are many more old, unused industrial sites in towns and cities across Ontario that could be cleaned up and redeveloped if the problems of financing and risk could be overcome. That's due to the fact that you want to make sure that the site is cleaned properly under environmental 1 and 2. The banks are standing right behind us to make sure that you do have this full compliance of phases 1, 2 and even 3.

OHBA understands that Bill 56 is intended to encourage brownfield revitalization through allowing municipalities to provide financial incentives for site cleanup and redevelopment—we're behind this 100%—legislation to regulate site remediation and provisions to limit liability. The Ontario Home Builders' Association believes that these are useful initiatives that will encourage more brownfield redevelopment. However, we fear that the impact may be limited to the redevelopment of lower-risk sites in prime locations, real estate markets that are very strong, municipalities that have the financial resources to offer these incentives and developers that are large enough to absorb the costs and risks inherent in brownfield projects. The initiatives in Bill 56 are not likely to be enough to encourage small and mid-sized homebuilders to become involved in brownfield redevelopment projects.

From the homebuilders' perspective, the major barriers to redevelopment of brownfield sites are the upfront costs of the site remediation and the risks involved. The risks for the homebuilder can be substantial. Site cleanup costs may be much higher than expected. The approval process can be extremely arduous and time-consuming, taking years for the proper approvals. I just might add at this point that the railway lands I was talking about that are quite prominent throughout the province where the industrial sites are abutting are now a circulating agency among the municipalities. I think that process, from a first-hand knowledge of myself dealing with it for the last two years, should definitely be taken out of the equation. There's got to be a way to get to the railway lands, to have a standard agreement with them through all the municipalities in Ontario, for them to move ahead quite quickly. Once you get involved in the CN process—there are no engineering facilities here to approve anything. It takes a long time to go to Winnipeg, back and forth, where they have a peer review. As I say, for myself it's been over a year and it's just a lot of money that could be put to much better use, especially to building affordable housing.

The approval process, as I said, is arduous, taking years for the proper approvals. The builder may assume responsibility for contamination, including off-site contamination. There may be consumer resistance to purchasing homes built on former industrial sites, particularly in smaller communities where there may be a stigma attached to some old industrial sites. In parts of the province the financial margin on new homes may not be sufficient to justify the costs and risks associated with the redevelopment of brownfield sites, even with proposed new standards for site cleanup and limitations

on environmental liability. Even where the real estate market is very strong, potential revenue from the sale of new homes or commercial space will not be sufficient to justify the cost and risk associated with the redevelopment of more difficult brownfield sites.

**Mr Dempsey:** The proposed legislation needs to be strengthened if it is going to be effective in encouraging brownfield redevelopment across Ontario. The Ministry of Municipal Affairs and Housing appointed a panel which investigated the barriers to brownfield development and wrote an excellent report in November 2000. It included a number of recommendations that would greatly increase the industry's ability to redevelop these sites. I would urge the government to once again review this paper and implement a more inclusive package of the recommendations into the legislation. The brownfields policy review is the one we're referring to:

Recommendation 3e, immunity from off-site contamination liability and protection from MOE orders and prosecutions;

Recommendation 5f, clarification of municipality's ability to forgive tax arrears;

Recommendation 7f, potential rebates on the PST and encouraging the federal government to rebate the GST;

Create linkages with the SuperBuild partnerships initiative to create a pool of funds to be used similarly to the way in which the US has created revolving loan funds for site cleanup.

Legislation in the United States demonstrates that financial incentives need not be limited to grants and tax increment financing. For example, the federal government offers a brownfield tax incentive under which environmental cleanup costs for properties in targeted areas are fully deductible in the year in which they are incurred.

In conclusion, OHBA supports any provincial initiatives that will encourage brownfield redevelopment. However, based on the experience of our members, we believe that some changes should be made in the proposed legislation to make it workable and effective in all parts of the province. The many brownfield sites across Ontario represent an underutilized resource that has the potential to be transformed into vibrant communities. With an effective framework of legislation and financial incentives, these blighted areas can once again be woven into the urban fabric of our towns and cities.

Once again I would like to thank you for the opportunity to speak this morning on this important piece of legislation, and we would now welcome any questions you may have.

**The Chair:** Thank you very much. That affords us about two and a half minutes per caucus for questions. We'll start this round with Mr Levac.

**Mr Levac:** I want to start by thanking you—you're your presentation and the thoughtful way in which you've evaluated the legislation. A quick question of clarification: you mentioned "circulating agency" when you were making reference to the rail lines. Could you explain that just quickly for me?

**Mr Kaufman:** Municipalities require the outside agencies, the environmental agencies, the Ministry of the Environment as well as Canadian National Railway, to comment on the redevelopment of the site, and if there's no standard policy—for example, the Ministry of the Environment has a standard policy, so we know the guidelines we have to follow, but there doesn't seem to be a standard policy set for CN, because every site they look at is different and you have to go through this process, which takes a very long time.

**Mr Levac:** That would require us to engage in negotiations with those groups that would affect those types of redevelopment of brownfield sites.

**Mr Kaufman:** That's correct.

**Mr Levac:** In your conclusion you mention that you support the bill, but then you have concerns that if it's not changed in the way in which you observe for the rest of the province—I mean, it's one and the other. Can you give me your impression of whether or not you can roundly come out and say, "Yes, this is a great piece of legislation," or are you saying that it's really not as good as everyone tries to make it to be and it really needs to have these changes to be effective? I really need to know because it's too much on the fence.

**Mr Dempsey:** It's a great piece of legislation but it needs maybe a little bit of tweaking.

**Mr Levac:** If that tweaking does not take place, will you be satisfied that this is still a great piece of legislation?

**Mr Dempsey:** I think we would be satisfied with anything that would deal with brownfield redevelopment right at this point.

**Mr Levac:** OK. I'm not trying to be difficult here. I just want to get a sense of whether or not the home-builders are saying to me, "We really need these additions," and you made reference to the government's own report that they received back from its panel; they didn't take some of the recommendations that you're encouraging that they take. There must have been a reason why the government didn't take those recommendations, or somebody didn't get to them and say, "If you miss these, you're not helping us."

**Mr Dempsey:** It's a good piece of legislation. If you want to make it a great piece of legislation, that's what it takes.

**Mr Levac:** I appreciate that very much.

**Mr Rosario Marchese (Trinity-Spadina):** Thank you both for your presentations. I'll get back to the last point you just made about "good" and "great." But you mentioned Smart Growth in your report, both of you, in quotations. Can either of you define for us briefly what you think Smart Growth is all about?

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**Mr Kaufman:** As far as Smart Growth is concerned, it's working together with the people who are affected the most. As I say, the Ontario government and the municipal government are working hand in hand to build affordable housing. We're talking about bringing back people to the centres of the cities, and you have to do it in

a manner that makes sense. You can't just go helter-skelter and let anybody put up whatever they want to put up. You've got to work together as a team to put up the proper developments.

As I say, if we're talking about the homeless and we're talking about putting up affordable housing, we have to go to that area where it makes the most sense, where the cost is the least, and there should be some incentive for whoever is putting this project up to have a tax incentive of some kind with the municipality at the end of the day.

**Mr Marchese:** Yes, I would agree. New Democrats have been talking about affordable housing for a long time. We've been trying to convince these folks that we really need affordable housing. They're just waiting for the private sector to build, and they're not building.

**Mr Kaufman:** When you call it affordable housing, I can only talk from personal experience, and that is that I built these houses so that the basement apartments which now as of right can be used throughout the city—although there is a moratorium on new construction for one year, when you're building affordable housing projects the way I have, they're allowing us to have the basements rented right away.

**Mr Marchese:** I agree.

**Mr Kaufman:** But the Ontario government criterion is \$560 for that basement apartment, and that's the way we've sold these houses. We sold the houses saying to the people, "You're paying \$200,000 in the centre of the city, but you must stick to the guideline of \$560 in order to get that approved right away." That's one way of getting around it.

**Mr Marchese:** Have you had any discussions with the government or government members with respect to this particular bill, Bill 56?

**Mr Dempsey:** We're in constant discussion with the Ministry of Municipal Affairs and Housing on brown-field sites. Certainly, the development permit system that has been started in areas such as Baysville, Hamilton and Oakville has to do somewhat with brownfield redevelopment as well.

**Mr Marchese:** You were saying at the end, in response to the Liberal question, that this "needs maybe"—you were a bit hesitant. Is there a reason why you were hesitant, why, as opposed to clearly saying, "It needs some work," you said, "needs maybe..."? You were a bit shy about that.

**Mr Dempsey:** I think the reason I was a little hesitant is, it's been a long time in the making. We want to see it done; we want to see some legislation in place that will help our members to do our business. So we want it to happen. We want a great bill, but we also want the legislation through.

**Mr Marchese:** I understand.

**Mr Norm Miller (Parry Sound-Muskoka):** Thank you for coming down here today, Wayne and Terry, and for speaking to us today. I am happy to hear you think it's a great piece of legislation. I assume that this process we're going through right now is the tweaking you're

talking about. I certainly know in Parry Sound-Muskoka we do have some key areas that are brownfield sites that would benefit from this legislation, in Parry Sound in particular, right on the waterfront, right on the town sewer and water, primary to be developed. I'd just like to thank you for coming down here today and giving us your point of view. Hopefully, we can incorporate some of the suggestions you've made to us.

**Ms Marilyn Mushinski (Scarborough Centre):** Just one question. You were asked by Mr Marchese what your definition of Smart Growth is. Could you tell me what your definition of affordable housing is?

**Mr Kaufman:** Affordable housing is what the population can afford, based on the guidelines that were set by the Ontario government going back to 1993, and going forth from that point, taking into consideration inflation of whatever value it's at. That's a starting point.

Back then, if my memory serves me correctly, they had put out numbers for a townhouse and numbers for a detached house. Those are the things they wanted us to live by, and I think the members of our association have tried to do that.

**Ms Mushinski:** So the example you gave with respect to the basement apartments is an example of that initiative.

**Mr Kaufman:** Exactly right, yes.

**Ms Mushinski:** I think it's a very good one, by the way.

**Mr Kaufman:** Thank you.

**The Chair:** Mr Arnott, you have time for a quick question.

**Mr Arnott:** You mentioned in your brief that the United States federal government has a tax incentive—I assume that's a tax credit—for environmental cleanup costs for properties in targeted areas, that the tax incentive means those costs are fully deductible in the year in which they're incurred. Would you think that kind of tax incentive would benefit us here, and if so, would you think it would be more appropriate that the federal government do it or the provincial government?

**Mr Dempsey:** I think if both groups could come to the table—we never turn down any tax incentives. It doesn't matter where it comes from. It could come from the municipality too.

**The Chair:** Thank you, gentlemen. We appreciate your coming before us here today.

#### ASSOCIATION OF MUNICIPALITIES OF ONTARIO

**The Chair:** Our next presentation will be from the Association of Municipalities of Ontario. Good morning. Welcome back, and thank you for being part of this. We have 20 minutes for your presentation this morning, Ms Mulvale.

**Ms Ann Mulvale:** To you, sir, and to the members of the committee, we thank you for this opportunity. You're probably all aware, but for the record, the Association of Municipalities of Ontario is a non-profit organization

representing almost all of Ontario's 447 municipalities and whose membership represents 98% of Ontario's population.

As you may know, the Association of Municipalities of Ontario played a central role in the Interim Waste Diversion Organization and in the development of its recommendations for a permanent WDO to the Minister of the Environment of the day, the Honourable Dan Newman.

Andy Pollock, who is with me this morning, is the director of waste management for the region of Peel. Previously he was with the city of Toronto and was very involved in the discussions.

We are pleased to see many of the interim WDO recommendations reflected in Bill 90. The Ministry of the Environment is to be commended for following through on its commitment to waste diversion in Ontario. After a number of tries over more than a decade, we have finally brokered a mutually acceptable framework among industry, the province and municipalities.

AMO brings a high level of support for this legislation, including the overall structure of the new Waste Diversion Ontario and industry financing organizations which would be created by the Waste Diversion Act. Having said that, there are a few important outstanding issues that we feel need to be addressed before the legislation is finalized.

First among these is the issue of 50% funding from industry for blue box funding. We also have comments and concerns related to organic waste diversion and the need for predictability and timeliness in funding for municipal waste diversion programs. Finally, we have questions related to voluntary contributions to the WDO.

Funding: the wording of section 24(5), blue box program limits on payments to municipalities, provides that, "A waste diversion program developed under this act for blue box waste shall not provide for payments to municipalities that total more than 50% of the total net operating costs incurred by the municipalities in connection with the program." AMO is concerned with the language as drafted, as it could generate an interpretive circumstance.

AMO understands that the intent of this wording is to ensure that no more than 50% of funding is provided to municipalities, allowing for the fact that individual municipalities may receive less than 50%. However, this wording leaves the question of guaranteed 50% aggregate funding ambiguous and does not accurately reflect the WDO recommendation, which was unanimously approved by the WDO board of directors. That recommendation stated, "Industry should provide financial support equal to 50% of the aggregate provincial net costs of municipal recycling programs."

While all the current parties to the original agreement may share a common interpretation of the intent of the legislation, AMO is concerned with the erosion of that consensus over time if the wording of section 24(5) is not clearly binding on industry to provide 50% funding of aggregate net municipal waste diversion costs.

AMO proposes the following alternative wording for section 24(5): "A waste diversion program developed under this act for municipal blue box programs shall provide for payments to municipalities from relevant industry that equals 50% of the aggregate province-wide net program costs incurred by municipalities in connection with its household waste diversion programs."

Funding for municipal organics waste diversion programs: the final WDO report recommended to the Minister of the Environment that the province provide funding to municipalities for their organic waste diversion programs. However, there does not appear to be a mechanism in Bill 90 to support organic waste diversion.

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Organic waste represents 30% to 40% of the municipal solid waste stream. It is therefore essential to increase the level of organic waste diversion in Ontario if we are to achieve the overall 50% provincial waste diversion target. According to preliminary estimates from the WDO, the net cost of operating a province-wide municipal organic waste diversion program could be expected to be nearly \$50 million.

AMO urges the standing committee to recommend that the legislation be amended to enable the province to provide such funding. Organics represent a significant share of household waste, and without support, municipalities will not be able to establish and/or expand their organics diversion programs.

Predictability and timeliness in funding municipal waste diversion programs: it is tremendously important for municipalities to have predictable and timely funding provided for their household waste diversion programs, including blue box and household hazardous waste. AMO urges the standing committee to recommend that these two waste streams be designated immediately, ie, as soon as the legislation comes into effect, and that funding be effective as of the date of designation.

Voluntary contributions: finally, we have questions related to voluntary contributions to the WDO. Under section 30(2), "The industry funding organization may reduce the amount of fees payable by a person under subsection (1), or exempt a person from subsection (1), if the person has made voluntary contributions of money, goods or services to the organization."

AMO is concerned by the lack of clarity with regard to what types of in-kind or voluntary contributions would qualify under this provision. Last year, the Canadian Newspaper Association was able to negotiate in-kind contributions in advertising space for municipalities in lieu of funding for newspaper recycling programs. While some of the in-kind advertising space was used by some municipalities, this in-kind contribution did not help in any substantive way with the costs associated with blue box programs.

In AMO's opinion, it is important to amend section 30(2) to provide some direction on the nature of voluntary contributions if they are to be allowed. We

recommend that the following conditions be added to section 30(2) so that,

"(a) the voluntary contribution must have a direct relationship, in terms of value to the municipality, to the amount of funding that it is replacing; and

"(b) the voluntary contribution must be contingent on the agreement of the recipient," ie, the municipality.

In conclusion, once again I would like to thank you for this opportunity to comment on what we believe is groundbreaking legislation in Ontario. We feel our recommendations do not in any way make a substantive change to the intent of the legislation, but rather clarify it, as this legislation will be a legacy piece and goes a significant distance to sustainable waste diversion in Ontario.

Thank you again for the opportunity to make this submission. Andy Pollock and I are ready to respond to your questions. Andy has much more technical background on this than I do, but between us we are confident we can respond to your questions, Mr Chairman.

**The Chair:** Thank you very much for your presentation. That leaves us a bit over three minutes per caucus for questions. We'll start this time with Mr Marchese.

**Mr Marchese:** Thank you, Ms Mulvale, and Andy—is your name here?

**Mr Andy Pollock:** Pollock.

**Mr Marchese:** Thank you for your presentation. Have you had discussions with the ministry about some of the recommendations you've made: ministry, minister, minister's staff?

**Ms Mulvale:** We've certainly circulated our intent. We sent a letter to the minister advising her of our delegation, and AMO staff and municipal officials certainly continue to work with the ministry staff.

**Mr Marchese:** Of course. My point was, did you get any feedback with respect to the suggestions you're making? Is there any resistance? If so, why?

**Ms Mulvale:** I think what we're saying is we're giving a gentle critique. We're celebrating the success of this, because it has taken over 10 years, and we believe they are listening. Part of the consultation process is, of course, the role of the standing committee.

**Mr Marchese:** I understand. You're so very kind. We go through these standing committees all the time, and every now and then they listen; it's rare. That's why we get worried about this democratic process of the standing committee, because—

**Ms Mulvale:** Well, sir, we continue to celebrate the consultation and success with this.

**Mr Marchese:** Of course. So do I. You're quite right. On the voluntary contributions, I think you make a very reasonable suggestion. The critique is reasonable. The ways to deal with them, at least in the two suggestions you make, are reasonable suggestions and I hope they will listen to that. It would seem to me it's hard to define in the bill how those voluntary contributions might be written because it's hard to encompass all the possibilities. But at least you're saying, "Consult us. Once

they've consulted us at least we've gone through another hurdle and if we're OK with it, it shouldn't be too bad."

**Ms Mulvale:** In fairness, AMO has been very much a participant, and Andy Pollock was involved in this right the way through. We believe a lot of the consensus that evolved reflected the fact both by the industry and by the ministry that the municipalities were listened to. So we think the wording of the (a) and (b) that we're proposing ensures the clarity which we believe was the intent of the legislation. It was just not completely adequately captured.

**Mr Marchese:** Of course, agreed. We're told that the levy on industry is being designed in a way that will tax recyclables rather than overall waste. Is that your reading, Andy?

**Mr Pollock:** Yes, there is a concern. It's a little bit vague, but the legislation seems to focus on recyclable materials as they're defined in provincial legislation. So it could be that only materials that are currently recyclable have to pay into the fund and companies that are using non-recyclable materials perhaps don't have to. So there's an issue there. I think that's an issue with industry, that they would like to see a broader base for raising funds, and particularly making sure packaging that currently isn't recyclable is also paying into the cost of recycling.

**Mr Marchese:** Right. That wasn't part of your submission. Is there a reason—an oversight, perhaps?

**Mr Pollock:** It's not part of AMO's presentation, I think because it's more of an industry issue. As long as municipalities get the funding, we'll be satisfied to pay for our programs. It's more of an issue of fairness in industry sectors that non-recyclable and recyclable packaging will be paying.

**Mr Arnott:** Thank you very much for your presentation. As you know, this committee is dealing with this bill at a very preliminary stage after first reading of the bill, which gives us all an opportunity to have real input into the decisions in terms of the points that Mr Marchese made. We do appreciate the constructive suggestions that you brought forward and AMO's very positive role in working on this issue for some time.

I have one question about your issue about funding for municipal organic waste diversion programs. You've estimated that the net cost of a program of that type across the province would be about \$50 million. How has that number been generated? Is it a credible number?

**Mr Pollock:** That was developed through the Waste Diversion Organization and it involved municipal representatives as well as industry representatives; consultants and corporations supporting recycling were very involved. There was a group of people who worked quite hard to model the future cost of organics diversion, and that was the number we came up with.

**Mr Arnott:** So would you be asking for the province to fund the full amount, or half of it, in partnership with municipalities, or what would you be suggesting? Ideally you'd want the full amount—

**Ms Mulvale:** Yes, but I think we're realists. What we can divert will increase the length of our landfill sites, which will lessen costs associated, not only in a financial but in an emotional sense of locating new landfill sites. So we recognize we have a responsibility here. However, we're trying to support the province in the realization of its goal of 50%. It's one we support, it's one we believe the people of Ontario support, so it's a question of saying, "How do you make that a program that can be sustainable, given the magnitude of the costs?"

**Mr Levac:** Thank you very much for your presentation. I appreciate the candour in indicating that your participation all along has been received and you're very happy that somebody's finally listening. I appreciate that. I have a couple of quick, maybe generic, questions for you if you can. Do you believe that the 50% goal is acceptable in this day and age when we have examples in industry where 100% of the costs is covered by the particular provider and they recycle 98% of their waste?

**Ms Mulvale:** If I might, I think you have to look where we are now. We've always believed that you have to inform the public of the opportunities and responsibilities. We found in Halton region—and we had a very difficult situation in the 1970s and 1980s, because we had no landfill site—that the gentle approach, the engaging approach, works and you can build on that. Then there may be a time when you move beyond that. But I would think that where we're at now, some municipalities are very high on waste diversion, some are not. So I would think that it's a good goal, and as we move from that we should move the benchmark, just like we're doing with smoking bylaws in municipalities. As the population increasingly becomes non-smoking, we can make greater inroads on that.

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**Mr Levac:** Then I would suspect that the next part of my generic question would be answered the same way. When you mentioned the life of a landfill site, I guess my question might be, why are we even considering having landfills when we can cite examples around the world where they're landfill-free?

**Ms Mulvale:** We chose them. Halton, if I could use as an example our landfill, had in its environmental assessment a requirement to have a non-landfill alternative before 50% of the capacity of that site was consumed. Then a new government came in and banned one of the options we were pursuing, which was energy from waste. I think as a people we have to understand that we generate a higher per capita waste than most other countries in the world, and we have an obligation to meet that responsibility. Reduction, reuse and recycling are all part of that goal. Yes, you're right, it would be a generic statement, but it's a priority of many of us at the municipal level. From the municipal stats, maybe Andy has something further to add to that.

**Mr Pollock:** I just think that landfilling or disposing of some amount of waste is probably a reality in the foreseeable future. I think every country in the world, even if they have advanced incineration techniques, is





still disposing of some residual material—the ash from the incinerator, for example. I don't think there are any examples of a zero-landfill situation out there today. Certainly, 50% is achievable. In Peel region, where I'm from, we have a goal of 70% diversion, which we think is achievable. We have an incinerator which contributes to that as well.

**Mr Levac:** I understand. Finally, with the clarifications you're suggesting to tighten up some of the wording to prevent some leakage, would you be satisfied and extremely happy with the bill?

**Ms Mulvale:** That is our submission on behalf of our members. Individual members may have slightly different things they might want to be critiqued, but we speak as a collective.

**Mr Levac:** As the collective, are you looking at any options other than the two major ones you've said here which should be included?

**Ms Mulvale:** We believe our submission reflects the collective statement of our organization.

**The Chair:** Thank you for your presentation. I would simply note that that other option you talked about has been restored, and you may want to make some comments to the new select committee on alternative fuel sources if you think there is merit in further exploration there.

**Ms Mulvale:** I'd be speaking as an individual. I had the unfortunate situation of being the chair of planning and public works in the region of Halton when we had no landfill site. No one would help when we were trucking our waste to the States. It's a bit of *déjà vu* with the disappointing situation that is still present in many municipalities 20 years later. I have exit points on my body that the good Lord didn't grace me with from being through that process. I have a lot of empathy for people in that capacity.

**The Chair:** Thanks again for your presentation.

#### PROFESSIONAL ENGINEERS ONTARIO ASSOCIATION OF PROFESSIONAL GEOSCIENTISTS OF ONTARIO

**The Chair:** Our next presentation will be from Professional Engineers Ontario and the Association of Professional Geoscientists of Ontario. Good morning and welcome to the committee. We have 20 minutes for your presentation this morning. I would just note if anyone is going to be speaking on the record, if they could introduce themselves for the purposes of Hansard.

**Mr John Gamble:** Good morning, Mr Gilchrist and members of the committee. This is a joint presentation of PEO and the APGO. With me is Brian Whiffin, the chair of the engineers' environment committee, and Bill Stiebel, the chair of the geoscientists' environment committee. I would also like to just acknowledge our two association presidents, Mr Gord Sterling and Dr Bill Pearson.

We're here today to basically commend this legislation. We think it's definitely very positive and moving in the right direction. As provincial regulators, we're going to focus our comments on two specific concepts addressed in section 168: the record of site condition, which is essentially the legal instrument to propel compliance with this act; and the notion of the qualified person, which is basically your quality control, quality assurance and your accountability measure for the work done.

We're here to comment in a positive vein. We're here to offer our assistance to the government, to the Ministry of Municipal Affairs and Housing and the Ministry of the Environment. We're prepared to throw the weight of our regulatory regimes behind this initiative. We are in the unique position where we can set up a regime to set standards for and qualify practitioners who will accept professional responsibility, provide professional accountability, and protect the public welfare and the environment. I know there is a great deal of concern about terms such as liability, accountability and responsibility, and we're basically here to tell you that we're prepared to step up to the plate.

Briefly, for those who haven't dealt with our organizations before, we are both self-regulating organizations. PEO regulates the Professional Engineers Act on behalf of the Ministry of the Attorney General, and the APGO on behalf of the Ministry of Northern Development and Mines. Both of our acts are public acts. They are accountable to the Legislature, to cabinet and to their respective ministers. They both have regulations under those acts that bind the members to a code of professional conduct, a code of professional ethics. As well, there is a very explicit requirement that the practitioner shall "regard the practitioner's duty to public welfare as paramount."

At this point in time I will turn the presentation over to Mr Brian Whiffin.

**Mr Brian Whiffin:** I'm Brian Whiffin, chair of the PEO environment committee. On page 4 of the brief, we have three key recommendations that we would like to put forth for consideration by the committee.

Firstly, there is currently a provision for a record of site condition in the guideline that exists today. We feel that this record of site condition is very prescriptive and could lead to higher costs for work in this area. We're advocating a more flexible document which makes provisions for professional judgment on how the record of site condition is completed. We believe this can be achieved while still providing protection of the public.

Our second recommendation really deals with how this would be addressed. You may be concerned about increased risks to the government of making this approach more flexible, but what we would like to recommend is that the qualified person be a licensed professional and therefore be professionally accountable under provincial statute.

Finally, our third recommendation is that our two groups, PEO and APGO, recommend setting standards

and qualifications for the qualified person under our legislation. This would be developed with consultation and input, obviously from the government and the key stakeholders.

Moving on to page 5, we have attempted to identify what we think the role of a qualified person may be. It's not specifically spelled out in Bill 56 at this point.

We recognize that this process of site assessment and remediation requires many different disciplines and practitioners beyond those of geoscientists and engineers. These are important roles for non-licensed practitioners. We would like to make it clear that we don't advocate that this work is solely the practice of geoscientists or engineers, and we are open to and endorse the multidisciplinary nature of this type of work.

However, the role of a QP is unique. By signing a record of site condition, the qualified person undertakes a number of different activities: one is they provide a knowledgeable professional opinion of whether there is an impact or potential impact on human life or the environment; they identify and recommend steps to remove or remediate any contamination found, if necessary; and finally, they verify that the work has been completed. In summary, the QP must be legally, ethically and professionally accountable for the record of site condition.

On page 6, what does a qualified person look like? What are the attributes of a qualified person? We have attempted to define what we think that might be and this would be incorporated or recognized under our legislation. There are four key attributes that we see: one is that the qualified person would have the appropriate combination of education, training, skills and experience; they would exhibit due care and diligence in the work they undertake; they would be objective; and finally, they would be accountable.

The regulation-making powers we have under our respective acts would allow us to incorporate this and raise the bar and the level of quality that goes into the work under the contaminated sites regulation. Finally, this would allow professional judgment to be incorporated in the record of site condition as well.

On page 7, as we have already alluded to, our legislation gives us the ability to make regulations that could govern this area. We have already developed a guideline, which I will refer to here, specifically arranged for engineers working in this area. This guideline exists already. We would be prepared to undertake a revision to that to meet the requirements of this legislation.

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On page 8, we've attempted to look at what are the summary elements of our proposal. We believe our proposal will meet the policy objectives of Bill 56. It will protect the public and the environment. The qualified person would be a professional who is licensed under legislation in Ontario. It will provide a clear, transparent system. The roles and responsibilities of the QP will be clear and well understood. Finally, the proposal will recognize the multidisciplinary nature of practitioners working in this area.

We've attempted to anticipate some of the questions that may arise from the committee today. I'll turn the microphone over to my colleague to go through some of those questions and our opinion on the answers.

**Mr Bill Stiebel:** My name is Bill Stiebel. I'm chair of the environmental committee for the Association of Professional Geoscientists of Ontario. My colleague on the right here is John Gamble, who is responsible for government relations for Professional Engineers Ontario. John had forgotten to mention that before.

On page 9, one of the things we do recognize is that this type of work is multidisciplinary and there are several components. The first component is often referred to as phase 1. Non-licensed practitioners can and do definitely participate in this area. To do a phase 1 does not necessarily require professional engineering or geoscience opinions. There are some sites where that will be required. Because of that, we recommend that Bill 56 consider a separate designation for those non-licensed practitioners who will conduct phase 1s on various sites. In conjunction with that, we would also recommend that there should be an onus on those practitioners to recognize within their professionalism when the need arises to have a professional opinion provided by a licensed geoscientist or licensed engineer. We see that as a very important aspect.

Who must be licensed? When must a professional be licensed to be a QP? Once you go beyond a phase 1, you get into very detailed examinations of contaminated sites that basically very much involve the application of geoscience, and particularly engineering principles when you move on to remediation. This expertise falls under the Professional Engineers Act and the Professional Geoscientists Act, and licensed professionals should conduct that work.

These types of phases of a contaminated site, phase 2 and phase 3 projects, can involve significant contamination, and consequently they pose a much greater risk to public health and safety and to the environment. We believe it's prudent public policy that the QP carrying out this work be fully accountable under statute to the public for the work carried out on these sites.

Would non-licensed practitioners be able to work on phase 2 and phase 3 projects? Yes, of course. In our own daily practice, the engineering companies and environmental companies that we operate on a daily basis do this type of work. Our jobs are multidisciplinary. We have all different types of disciplines working on a job underneath the senior project manager, and because of this the QP, the individual who oversees the overall project and who signs and therefore accepts the professional responsibility for the record of site condition which must be signed at the completion of the work on behalf of the project team, should be a licensed professional. This makes the role of the QP a very unique position in the overall aspect of contaminated sites and brownfields redevelopment, because the QP is responsible overall for ensuring that all the applicable technical resources and appropriate expertise needed to solve the problem at a

particular site is indeed employed on the project and, in the end, he or she will sign off and accept full responsibility for that work.

In summary, at APGO and PEO we fully support the initiative of the Ontario government to encourage redevelopment of brownfield sites. We also recognize that the assessment of these sites requires a full multi-disciplinary approach to ensure the protection of public safety and the natural environment.

We recognize that non-licensed practitioners should participate in phase 1s but recommend that they should have a different designation than that of a professional QP. We also recommend that phase 2 and phase 3 assessments or site remediation and beyond, because of the greater consequences of potential contamination associated with those particular sites, should only be done by a licensed QP. They should be either a licensed professional engineer or a licensed professional geoscientist because the bulk of the work on these sites falls into those two disciplines.

We have developed a draft proposal, attached at the end of this document, which is a process to determine the QP as a licensed professional engineer or licensed professional geoscientist and to provide a complete statutory public accountability through an open complaints and discipline process. This exists within the statutes of the acts currently.

In conclusion, we, PEO and APGO, are committed to working with the Ministry of the Environment, other stakeholders and other government ministries to ensure we have an appropriate QP process for the cleanup of contaminated sites using appropriate professionals.

We'd be happy to answer any questions you have at this point in time, and refer you to more information that is attached to the end of this document.

**The Chair:** That affords us just under two and a half minutes per caucus.

**Ms Mushinski:** Thank you for your presentation this morning. It was very interesting. I take it that Ontario is not the first jurisdiction to be undergoing this kind of legislation for the redevelopment of brownfield lands.

**Mr Stiebel:** There is other legislation in other jurisdictions, in the United States mainly, and of course there is the Waste Management Act in BC, which has a different process for these types of practitioners. The BC approach is much more restrictive than the approach we are proposing here in Ontario. The approach we're proposing here is significantly different than setting up a new bureaucratic process, a licensing process separate from the existing statutes, as currently exists in many US states.

The other aspect is that there is a precedent for the QP. It came out of the mining standards task force as a result of the Bre-X incident. Basically, for anybody who is involved in mining work, any type of document that's going to be released for a public mining company must be signed by a QP, whether it's engineering or environmental or some other aspect of the work.

**Ms Mushinski:** You obviously have drafted these proposals based on the experience of cleanup in lands in other jurisdictions like the United States.

**Mr Stiebel:** No, we've based our proposal on our knowledge and our experience in working in the contaminated sites environment in Ontario and Canada, taking into account what has been done in other jurisdictions elsewhere. We've considered what they've done in other jurisdictions. Our recommendations are specific to this type of work in Ontario.

**Mr Gamble:** I'd just like to add that we view that certainly the phase 2 and phase 3 work is our responsibility. It's a responsibility that you should not let us off the hook for. What we want to do is be very upfront with the Ministry of the Environment and the Ministry of Municipal Affairs that we're prepared to step up to the plate and we're prepared to go through a process to ensure that when you get a licensed engineer or a licensed geoscientist, you're getting the right type who is appropriately qualified, appropriately experienced, and can be held accountable.

**Ms Mushinski:** Clearly you have raised this with the ministry, and they've taken it under advisement at this point, I take it?

**Mr Gamble:** We certainly hope they have. Our submission to the EBR posting is part of your package.

**Mr Levac:** Thank you very much for your presentation. Obviously, I sense from your presentation that you are extremely serious about being a partner in the recapturing of our brownfield sites here in Ontario, and I appreciate that.

I need a clarification. Under the third bullet on page 4, it was stated that you're recommending setting the standards and qualifications for QPs under the Professional Engineering Act. Do I take it then that they are not in existence, or you're making reference to making those standards available because of the bill?

**Mr Gamble:** Right now we have the ability to set classes of licence to deal with specific disciplines and so forth. Currently, they're not exercised. Notwithstanding that, a practitioner is required under regulation 941 to only practise where they are competent to do so by virtue of their training experience.

In light of this bill, what we want to do is make what constitutes appropriate training experience quite explicit. We think there is enough public interest that it's warranting a sort of additional step. Basically, I think we're in agreement with the government that it's time to raise the bar.

**Mr Levac:** It helped move you toward raising the bar, and that's going to require legislation?

**Mr Gamble:** Right now, we can do that through regulation under our act and the Professional Geoscientists Act.

**Mr Levac:** So that can be handled in-house.

**Mr Stiebel:** That's correct.

**Mr Gamble:** That's correct. We'd like to all be pulling the rope in the same direction.

**Mr Levac:** Am I safe in assuming that because of the bill's introduction, regardless of how it ends up, you're planning to do that anyway?

**Mr Gamble:** Yes, we are.

**Mr Levac:** That's a good note. Thank you. I appreciate the fact that you're self-regulating, shall I say.

**The Chair:** And I appreciate that time is up. Mr Marchese.

**Mr Marchese:** Obviously, much of your focus is on the problem of unlicensed practitioners. Are there some examples of individuals who have done these site assessments where they have been incompetent and/or have caused serious problems down the line because they didn't use the licensed engineers?

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**Mr Stiebel:** Let me respond to that. I don't think we can give specific examples. Usually these only come to light if there turns out to be a problem. What we're trying to do is ensure that those people who do practise on these sites are indeed competent and qualified to do the work. We feel that can best be achieved through a licensed regime, also taking into account that the majority of the work is professional engineering and professionally assessed.

**Mr Marchese:** I understand. I just thought you were drawing on some body of experience where you've had these problems before and, because of public concern, you are bringing this to our attention, obviously.

**Mr Gamble:** If I can offer a specific example, someone from the Ministry of the Environment came to meet with our deputy registrar of complaints, discipline, to talk about some of the hypotheticals they use in the Professional Engineers Act. We have one hand tied behind our back under the current regime because the policy states "professional engineer or other natural scientist." This gives a defence to our discipline committee that it's not the practice of engineering and therefore is difficult to hold people to that standard. What we're saying is, let's move the standard up, not down. Again, we're not saying we're brighter or smarter than the other practitioners, but we are accountable under public acts.

**Mr Marchese:** That was very clear. I understood that.

**Mr Whiffin:** Let me answer that as well. The one point I want to make is that the brownfields advisory panel came out very clearly in looking at the quality control on individuals undertaking this work, and that was one of their key recommendations; hence our response.

**Mr Marchese:** No problem. I understand. Thank you.

Do you have any other concerns about the bill or any other suggestions with respect to the other aspects of the bill that might concern each of you individually or collectively, or is this the prime concern for you?

**Mr Whiffin:** We're really here representing PEO and APGO as regulatory bodies regulating professionals doing this work, so we've narrowed our comments to that particular aspect.

**The Chair:** Thank you, gentlemen, for coming before us this morning.

## ASSOCIATION OF MUNICIPALITIES OF ONTARIO

**The Chair:** Committee members, there is a change. You'll be pleased to know that the 4:40 presentation has now been moved up. It's Mr Patrick Moyle, the Association of Municipalities of Ontario. Good morning and welcome to the committee.

**Mr Patrick Moyle:** I would like to thank the delegation who originally had this time slot. As you indicated, it helps move these things along. That's the good news. The bad news is that the technical expert I was bringing to deal with the tax sale issue is not available at this time in the morning, so please be gentle in the questions around failed tax sales, because I'm not an expert on that issue.

My name is Pat Moyle. I'm the executive director with the Association of Municipalities of Ontario. Our president, Ann Mulvale, was here a few minutes ago. She introduced the organization, and I won't go over that again.

Municipalities have much to gain in revitalizing inactive or abandoned urban sites. Municipalities have an interest in reducing the health and safety hazards posed by abandoned sites; they want to render derelict areas more attractive to residents and businesses; they want to concentrate development where infrastructure already exists rather than bearing the cost of expanding infrastructure for development on greenfields; and they want to generate property tax income from sites that are often on prime urban land.

A number of Ontario municipalities are already showing great leadership in promoting brownfields redevelopment in Hamilton, Kitchener, Brantford and Toronto, to name a few. However, in many cases municipalities are finding their efforts stymied by the double barrier of cost and environmental liability.

AMO and its members welcome the initiative of the provincial government to provide incentives and tools to help municipalities and developers work together to clean up contaminated sites and redevelop them.

Bill 56, by introducing and enhancing a number of tools and financial incentives, is a positive step in the right direction. I will outline some of these tools and incentives. However, Bill 56, as currently drafted, offers little to municipalities to overcome the fundamental barriers of cost and environmental liability. AMO is therefore recommending several friendly amendments to address the issue of limited environmental liability. AMO is also proposing a way to streamline the municipal tax sales process as it relates to brownfields.

In the package that was circulated this morning, solicitors from a number of municipalities have drafted some amendments to give effect to the concerns expressed in this paper.

The first issue is around liability protection. Bill 56 provides very limited liability protection from Ministry of the Environment admin orders. Much of the liability risk is actually civil liability; that is, the private right to sue for contamination that has leaked from one site to an adjacent site. The government had made it clear that it would not be addressing civil liability, but it nevertheless continues to pose a very large liability risk to municipalities. I believe there will be subsequent presentations made to this committee from members of the brownfields advisory panel who will be speaking to that later on.

In terms of the administrative liability protection afforded to municipalities in Bill 56, it is an improvement on the liability protection agreements that used to be negotiated between municipalities and the Ministry of the Environment on a case-by-case basis.

Section 168.14 provides protection to a municipality that becomes an owner of a non-municipal property resulting from a failed tax sale and from any other order under the Environmental Protection Act. However, this protection is limited to two years unless extended by the director.

Given the time period that it takes a municipal council to secure adequate financing, line up remediation works and complete the remediation, the two-year window of administrative liability protection would only be sufficient for the least problematic of sites, in which case liability protection would likely not be needed in the first place. Putting a short time frame on such liability protection simply serves as a disincentive to municipal councils to undertake such work.

AMO strongly urges the committee to recommend an amendment to section 168.14 which would simply take out the two-year limit. This would recognize municipalities as trustees who will run the risk of director's orders under exceptional circumstances. The period of time would be left to the discretion of the director. A proposed amendment is attached for your consideration.

The next point relates to the streamlining of the tax sales process. Presently, under the existing Municipal Tax Sales Act, with the proposed amendments in Bill 56, in the event that a municipality carries out a public sale of a contaminated site and there are no successful bidders, usually because the cancellation price exceeds the value of the property combined with the potential cleanup costs, the municipality may elect to conduct its own environmental site assessment before it decides if it wishes to register a notice of vesting. If the municipality then decides to take ownership of the site to facilitate its redevelopment, the municipality in effect assumes the risk of ownership of a contaminated site, and it still has to write off the outstanding taxes. The municipality then has to find a purchaser once again, beginning the process all over again.

AMO is proposing an amendment to the Municipal Tax Sales Act which would provide a second or even multiple levels of public sale for the confirmed contaminated sites, accompanied by a write-off of all or a portion of the cancellation price. The municipality may

then be able to sell the site under the tax sales act without ever having to become the owner. Following a failed tax sale, the municipality would be allowed to re-advertise a property for auction or tender without having to once again go through the year-long notice process. This would both expedite the process and benefit the taxpayer. No one should be prejudiced by a second or multiple-tender auction, as anyone acquiring an interest in the property would see the tax arrears certificate on title and would make inquiries. A proposed amendment is attached for your consideration.

The third point we would like to make this morning relates to the issue of funding. Implicit in this proposed legislation is that municipalities and developers have adequate financial resources to invest in the cleanup of brownfields. This is simply not the case in most municipalities, particularly in smaller municipalities with a history of industrial activity but a less competitive commercial real estate market.

A vitally important ingredient to encourage brownfields redevelopment is funding. While this is not necessarily an issue that should be addressed in legislation, some funding is needed to clean up the many sites for which there is no private sector interest to become involved. As all three orders of government benefited from tax revenue from the site when it was active and would benefit from future tax revenue once it was reactivated, it does not stand to reason that the burden of the cost of remediation work should fall solely on the municipality and the property tax base.

To date, the provincial and federal governments have been silent on their willingness to financially support brownfields cleanup, with the exception of the funding made available for the Toronto waterfront redevelopment announcement. This funding is a very good step and one that needs to be replicated and available to other municipalities. Again, we share many of the comments and concerns expressed by the Ontario Home Builders' Association. There was a specific reference made during the task force on creating a SuperBuild-like fund to assist in dealing with the cost of environmental cleanups, and the notion of providing some tax credits—PST credits, GST credits—would provide some incentive to the developer to participate.

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Finally, on new tools and financial incentives, the proposed legislation provides municipalities with a number of new and enhanced tools and options for dealing with brownfields within their boundaries, most notably providing municipalities with the option of whether or not to take over a site in the event of a failed tax sale, and the right for a municipal inspector to enter a property to undertake an inspection. Provisions to allow for a form of tax increment financing by providing municipalities with the authority to freeze or excusing a developer's payment of property and educational taxes while redeveloping a site are also very beneficial incentives.

Thank you again for the opportunity to provide comments on Bill 56 to the standing committee. I trust

our input has been useful in your review of the proposed legislation.

**The Chair:** Thank you very much, and that leaves us about two and a half minutes per caucus. This time we'll start with Mr Levac.

**Mr Levac:** Thanks very much for your presentation, and I appreciate your pointing out that the municipality I represent, along with the county of Brant, is one of the front-runners in trying to redevelop its brownfield sites.

In my conversation with Councillor Ceschi-Smith, who has spearheaded the actions of our municipality along with hopefully kick-starting some of the provincial ideas, she expressed very similar concerns about the liability and the funding issue. Having said that, you mentioned that the idea of redevelopment is not an odd one, asking the government to step to the plate financially, because indeed federal, provincial and municipal governments received the benefits while those industries were in place and will, once redeveloped, receive the same benefits. It's basically a link of saying, "Let's get us back on to the tax roll again." So it will give us some assistance in doing that. That's basically a synopsis of what we're saying here in terms of the funding?

**Mr Moyle:** That's correct.

**Mr Levac:** Having said that as well, the concern I have is recognition of the history involved in some of our municipalities—and you've mentioned Hamilton, Windsor, Brantford and Toronto specifically. Their industrial base was established long before many others were. We didn't have environmental rules and we didn't know what we were doing to our land at that time, and the recapturing of that represents a broader opportunity because of where they were developed in the first place.

Would you suggest that if those things are not in place, we may not be able to redevelop those brownfield sites with the present legislation?

**Mr Moyle:** I guess time will tell. I focused on some of the improvements we're talking about, given the timing that we have available today. We have provided a separate report in the middle of June to the Ministry of the Environment and the Ministry of Municipal Affairs on a more technical evaluation of the bill. There are many improvements over the current situation contained in the bill. The fact that the government has recognized that brownfield development is a marvellous opportunity to encourage smart growth and to encourage the utilization of land that in many cases is ripe for development but has environmental liability issues is a very good one. The notion of proposing tax increment financing, making amendments to the provincial policy statement, making improvements to tax sale processes: those kinds of initiatives are very positive.

The key thing now—I know it's difficult to address in legislation—is the issue of funding. I know the task force had made a series of recommendations around creating a fund, perhaps using SuperBuild as the model, or some sort of fund that would be available to help fix those sites, where there isn't an economic incentive for the

private sector to swoop in—say, a very small community—to take advantage of it.

We are cautiously optimistic that some future budget may have some recognition of the fact that this is a very good first step in solving the brownfield puzzle, but perhaps a budget announcement or some program announcement in the future would give teeth and make this legislation work, and work very quickly.

**Mr Marchese:** This was one of my concerns when we committed to build a house, that much of the incentive is left to the municipality to do. Of course, we've all been very concerned about the downloading of services to the municipalities and worried about their ability to be helpful in these instances, not just for this but for so many other things.

I think I hear you say that as much as this is very good in terms of this particular law, it will be limited in its success unless the province finds different ways to bring in different funding support. So it's OK, but we won't be accomplishing very much unless we provide more money. Is that more or less the case?

**Mr Moyle:** We recognize that this is legislation, and legislation cannot deal specifically with new funding models and funding programs. So we've limited our concerns or comments to making improvements to the bill. But there is certainly a need, and there is a lot of history in other jurisdictions, primarily in the States, where the federal government and the state governments are actively involved on the funding side of it. Again, the task force had made recommendations to look at a SuperBuild model or something similar to that. We continue to encourage the government to look at that as a way of giving effect to legislation.

**Mr Marchese:** I agree. The Conservative government looks to the US often for many of its ideas. It's funny that when there are some good ideas in the US, they seem to be very slow in picking them up.

With respect to issues of liability, are you concerned that many municipalities may not engage in this kind of activity because of the liability questions? I know you raise the fear, but do you really believe that many of them will be perhaps prohibited from doing it because of the fears connected to liability?

**Mr Moyle:** The larger issue is civil liability, which was not really addressed in the legislation. Again, I don't know if this would be the vehicle for dealing with that issue or some other vehicle. But my sense is that there are a number of communities in Ontario that are looking at redeveloping brownfield sites. They're looking at this legislation as a good first step to help them. In particular, the notion of tax increment financing is very welcome. The fact that the province will be contributing its share through education is very welcome. So there are a number of communities that are ready to go, looking at tax increment financing, looking forward to the education portion being included in that funding arrangement to make a number of projects go, and hopefully go very quickly.

**Mr Arnott:** Thank you very much for your presentation. It's good to hear from AMO twice in the same morning on two different bills. You've raised the issue of liability protection. Of course that's, as I understand, the fundamental crux of the bill, but you're suggesting it needs to be enhanced for municipalities. You've suggested that the two-year window of administrative liability protection would only be sufficient for the least problematic of sites and you want to give more discretionary power to the director, as I understand it.

**Mr Moyle:** That's correct.

**Mr Arnott:** Would it still make sense to have some upper limit on the time frame to make sure that nothing happens over a long period of time? I was thinking maybe five years.

**Mr Moyle:** Yes. In fact, I think the original recommendation of the advisory panel was a five-year period.

**Mr Arnott:** A maximum of five years.

**Mr Moyle:** A maximum five-year period. I think each one of these cases is special and different and unique. Having a reasonably short period for limitation may potentially scare off some municipalities. So providing or vesting the discretion with the director of having an offset five years would certainly go a long way in allaying that concern.

**Mr Arnott:** In terms of funding, you mentioned that some state governments are involved in financing brown-field cleanups. Would you be able to give us some more information on that?

**Mr Moyle:** Yes.

**Mr Arnott:** Because the previous presenter, the Ontario Home Builders' Association, talked about the federal government, but they didn't indicate that the state governments were involved in it.

**Mr Moyle:** Yes. There's a substantial body of work that was provided through to the advisory panel on what other jurisdictions are doing, and we would be happy to provide that to you.

**The Chair:** Any further questions? Seeing none, thank you very much for coming before us here this morning.

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## ONTARIO WASTE MANAGEMENT ASSOCIATION

**The Chair:** Our next presentation will be from the Ontario Waste Management Association. Good morning and welcome to the committee.

**Mr Robert Cook:** Mr Chair, committee members, ladies and gentlemen, good morning. My name is Rob Cook and I'm the executive director of the Ontario Waste Management Association. With me is John Devins, who is the vice-president of the association and also owner of Sandhill Disposal, which is a small, privately owned waste management company operating out of the town of Caledon.

It's a pleasure to be here this morning and have the opportunity to comment on Bill 90. Before I get into

some of the details, I'd like to give you a little bit of background in terms of who we are and whom we represent. OWMA represents over 300 private sector companies and individuals involved in the waste services industry. So unlike many of the groups you will have before you on Bill 90, we're neither brand owners, in terms of generating materials, nor are we municipalities. We're basically the private sector service providers for the full range of waste services. We've been in existence for over 16 years and we've been active participants in the development of regulatory and policy initiatives at all levels of government. Our members have very diverse business interests, from landfills to transfer stations to material recycling facilities, organics processing, composting and hazardous waste. So we cover the full spectrum of waste management services. Currently over 80% of the residential recyclable waste stream in Ontario is collected by our members, and the private sector generally collects and processes over 95% of the IC&I recyclable waste stream.

We've had a history of involvement with the previous Waste Diversion Organization. Our organization was afforded observer status on all three task groups that operated under WDO, those being household special waste, organics, and curbside recycling optimization. We also had individual member companies, 11 of them, that participated in the previous WDO process.

Clearly, OWMA strongly supports economically sustainable waste diversion, and we have a very significant interest in regulatory initiatives that will affect the residential waste stream and also potentially that would affect the IC&I waste stream.

In terms of Bill 90 specifically, there are three general points I'd like to make to the committee. As strong proponents of waste diversion, we generally support the philosophy and the rationale reflected in Bill 90. We also support the establishment of industry responsibility for the development and administration of Waste Diversion Ontario.

The act itself is essentially a structural framework for the establishment of the new WDO and ancillary structures that will go with it, and obviously the important details on how this bill will be implemented are going to be contained in the regulations. They aren't before us, but we strongly request that the Minister of the Environment consult with stakeholders as regulations are proposed under this act.

I'd like to refer to a couple of specific sections. Subsection 3(3), observers on the board of directors: we're quite pleased as an organization to have the opportunity to appoint an observer to the WDO board of directors. We believe that an OWMA appointee will be able to bring much to the table in terms of private sector waste management experience and some economic rationalization that may come forward with waste diversion programs.

Section 4, in terms of the responsibilities of WDO: there are two specific items. In clause 4(a) the WDO is required to monitor the effectiveness of waste diversion

programs. We would suggest that effectiveness may mean assessing diversion rates, that a program may be assessed as having increased diversion from 40% to 60%. What we feel is missing is an obligation to also monitor the efficiency of those programs, ie, the cost. It's one thing to go from 40% to 50% to 60%, but it's also important to understand what the costs are to make those incremental changes in the effectiveness of the program. So we are recommending under clause 4(a) that the notion of efficiency also be added to the responsibility of WDO.

Clause 4(c) is probably a key section from our point of view. Clause 4(c) recognizes the need to ensure that waste diversion programs affect Ontario's marketplace fairly. It's our understanding that the marketplace is essentially being defined from a brand owner perspective, those companies and organizations that will be funding the programs. There is also, however, the potential for waste diversion programs to affect our industry, the private sector waste management services. That impact could largely come from the funding allocations to municipalities, especially if funding is being provided for capital projects, for facilities. We are concerned that that subsidization may encourage municipalities to intrude into the traditional IC&I marketplace, which is largely at this point serviced by the private sector. So we would request WDO also be cognitive of the impact that waste diversion programs will have or may have on the private sector services industry. As a result of that, we have recommended a change in 4(c) to add the waste management industry as something the WDO should consider when developing a waste diversion plan.

Section 6, policies established by the Minister: section 6 basically allows the Minister of the Environment to establish policy, and the WDO implements and operationalizes that policy. We are strong supporters that policy creation should remain in the hands of the minister and that WDO's most effective role will be in implementing and delivering that policy.

Section 25 deals with information to be submitted to the minister as part of a waste diversion program proposal. It includes things like the estimated cost to implement a program, the estimated cost of operating and developing the program. Again, what we believe is missing is a requirement at some point to consider what the actual costs were. At a proposal stage that's not possible to do, but it is possible to provide the minister with a timeline as to when those programs would be assessed and you can compare actual costs to the original estimated costs. So we would recommend that a new subsection be added under section 25 including a timetable for reporting to the minister on the actual costs of developing, implementing and operating a waste diversion program.

Our last comment is dealing with section 26. We don't have a recommendation. It indicates that changes can be made to waste diversion plans once they're approved by the minister unless the changes are material changes. "Material change" is essentially undefined. There is some

case law in terms of what it means. But we are asking that perhaps section 26 could be clarified to understand what a material change to a waste diversion program might be.

That generally concludes my comments. We're certainly supportive of Bill 90 and we look forward to initiating that organization and moving forward on waste diversion. We'd be happy to answer any questions.

**The Chair:** Thank you very much. That leave us about three minutes per caucus. We'll start this time with Mr Marchese.

**Mr Marchese:** Thank you both for your presentation. I was just thinking about what the Association of Municipalities of Ontario presented. I think you were here for that.

**Mr Cook:** No, unfortunately I wasn't.

**Mr Marchese:** I wondered if you could comment on some of the other things they spoke about with respect to funding. "Industry should provide financial support equal to 50% of the aggregate provincial net costs of municipal recycling programs" is a recommendation they make, because the present wording in there suggests, "A waste diversion program developed under this act for blue box waste shall not provide for payments to municipalities that total more than 50% of the total net" and it suggests that perhaps they wouldn't be paying an amount equal to 50%. Do you have a comment with respect to that?

**Mr Cook:** We don't have an official position on 50% funding. We do, however, strongly support that somewhere in the system to reimburse municipalities there should be integrated the notice of efficiency. I'm not sure whether the section is worded to allow the adoption of some kind of measurement so that municipalities that are being progressive, are moving forward, are being efficient, may at the end of the day receive slightly higher funding than a municipality that isn't. I'm not sure whether that's the concept that's embodied in that clause, but it certainly would allow that kind of program to be developed and implemented.

**Mr Marchese:** I don't think that is the case. That's my reading of it, and it's not a detailed reading of it. But they were recommending that funding be very clearly stated as being 50% rather than some vague language that suggests that it may not be.

Under "Voluntary Contributions," "The industry funding organization may reduce the amount of fees payable by a person under subsection (1), or exempt a person from subsection (1), if the person has made voluntary contributions of money, goods or services," and they state that there's some lack of clarity. They make recommendations suggesting the following:

"(a) the voluntary contributions must have a direct relationship in terms of value to the municipality, to the amount of funding that it is replacing; and

"(b) the voluntary contribution must be contingent on the agreement of the recipient," eg municipalities.

They seemed fair suggestions to me. Do you have any comment with respect to that?

**Mr Cook:** We haven't really assessed that part of the bill. That's probably better for brand owners to speak on as opposed to us as service deliverers. We don't really have a position on that.

**Mr Arnott:** I want to thank you for your presentation. I thought it was excellent. We appreciate your advice and your recommendations. As you know, this bill is before this committee after first reading, and it's an opportunity for us to consult with affected stakeholders at a preliminary stage before the second reading debate in the Legislature. Certainly it's the commitment of the government to listen to what everybody has to say before final decisions are made in terms of the second reading.

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Your suggestion that the minister would continue to consult with affected stakeholders, I know, will happen. The Minister of the Environment has a track record of consulting effectively with her stakeholders before final decisions are made. I think you'll continue to see that, obviously.

Your suggestions, as I see them, are intended to try and make sure that cost-effectiveness is considered over the long term and costs don't spiral out of control. Those are objectives that the government shares as well, as do municipalities and certainly the industries that are going to be affected. So I think those suggestions are constructive ones and we do appreciate them.

**Mr Levac:** Thank you very much, Rob and John, for your presentation. I have maybe a generic question, again. When you indicate that you want to put in efficiency along with effectiveness, to me that implies there's going to be a cost involved in raising your per cent. You said 30%, 40%, 50%. What cost is that going to be to the industry, and to municipalities, I'm assuming? Have you studied that and looked at a cut-off line in which you would say, "It's not efficient, so we don't want to do it"? That's where I'm getting stuck. Is there a cost you're placing on recycling, or are you asking us just to be aware of it so that we know how much it does cost as it's happening?

**Mr Cook:** I don't think in any way we're suggesting there's an upper limit to cost, that at some point you'd say, "No more recycling because it's too costly." But I think it's important that people appreciate what the costs are.

**Mr Levac:** So that's basically what you're getting at. It's just make sure we know where it is because there's no provision in there for it. You're suggesting that we report, along with the WDO, to the ministry the effectiveness, the efficiency, which is the cost, with no implication whatsoever of, "You can't do it because you're hurting us on the profit level."

**Mr Cook:** Oh, no. I would look at it as that information will provide the rationale for politicians at the municipal level or at the provincial level or WDO to assess where they are.

**Mr Levac:** For funding and all of those other things. That's wonderful. I just wanted clarification of that.

**The Chair:** Thank you both for coming before us here this morning. We appreciate your presentation.

## PAPER AND PAPERBOARD PACKAGING ENVIRONMENTAL COUNCIL

**The Chair:** Our next presentation will be from the Paper and Paperboard Packaging Environmental Council. Good morning. Welcome to the committee.

**Mr John Mullinder:** Good morning. I'm John Mullinder, the executive director of PPEC, as we're commonly known. I neglected to tell the clerk that I do have a handout, if she could just pass it around when she's ready.

PPEC is the national association for the paper packaging industry on environmental issues. Its membership comprises packaging mills and packaging converters, some 120 companies, and it represented the industry on the national packaging task force.

Paper recycling is a major industry in Ontario. If I could hand out this flow sheet, you can see from the paper flow sheet that the paper stream flows through various hands as it is created and recycled. I represent the packaging converters and the packaging mills part of that flow sheet that you're seeing. The IC&I loop, as it's called, the industrial, commercial and institutional loop, is the major loop. The small dotted loop that you see there is the residential loop, or the blue box, as it's commonly known. The blue box is becoming increasingly important to the paper industry, but I just wanted to give the context of where the blue box fits into the total Ontario paper recycling scene set before you.

When you look at the residential blue box, the dotted line loop, if you like, some 75% of the material recovered by the blue box is used paper in one form or another: old newspapers, boxes, cartons, fine paper. In fact, the blue box is essentially a paper recovery system.

The paper industry has major assets committed to residential fibre recycling. The 21 Ontario mills that can use blue box paper collectively have invested millions of dollars in being able to handle this material. Newsprint recycling mills have added de-inking technology. Packaging recycling mills have added expensive new cleaning and screening systems to remove glass, plastic and metal contamination out of residential fibre.

The industry's dependence on the recovery of household fibre is also increasing. Currently the blue box supplies about 20% of the total Ontario recycling mills' feedstock. The mills are here for the long haul and have invested heavily in paper recycling in this province. In addition, the paper recycling mills contributed \$34.7 million to Ontario municipalities in the form of blue box revenues in 1999—almost 60% of total blue box revenues.

While we have good relations with newspaper publishers and packaging brand owners and retailers, they do not represent these paper industry interests; they represent their own diverse interests and agendas. We do not want these bodies on the proposed WDO board to

determine our future through their actions at the WDO board level or through any levy-setting authority they may have on an industry funding organization. Our considerable assets are at stake and we wish to protect them.

We do commend the Ministry of the Environment for bringing forth Bill 90 because now at least we have something to work with and improve. Stewardship is a very slippery issue. We recognize that this is an enabling bill and that to a certain extent it has to be general and vague, but Bill 90 is too general and vague and lacks key details that could have a major impact on our industry.

The following are some of the points we wish to make at this point. Our full written submission will be made in writing by September 21.

The first point is powers of the minister. It seems that Bill 90 gives power to the minister to enact regulations without even going to cabinet. Is this correct? Where are the checks and balances on this minister, the next minister, and what is the appeal process?

Number 2, the WDO board of directors: we maintain that the paper end-markets are sufficiently important to the sustainability of the blue box that they should have direct representation on its board of directors. We would also like clarification of the length of time appointments to the board are for. Perhaps these should be reviewed annually.

Point number 3, the lack of definitions or clear definitions: we recognize again that Bill 90 is enabling legislation that needs to cover a variety of stewardship options and we've been told by the ministry that certain clauses mean certain things. However, civil servants move on and governments change, so we have to deal with what we see here.

Blue box waste is not clearly defined in the draft. This is apparently going to be a revised version of regulation 101, which in fact is flawed, and we readily admit that, but until we see how it's actually going to be, how can we comment on it? Is it going to include materials that are currently not being collected, maybe because it's not economically smart to collect them? If municipalities are forced to collect these materials, that could potentially drive up the cost of the whole system.

The word "steward" is not defined anywhere in the regulation. We recognize that "steward" has to cover a lot of areas, because it's looking at tires, batteries, blue box, organics, and the stewards may vary. There are several industry sectors involved in the commercial supply chain, as you see in the flow chart before you, but the composition of the WDO board of directors is defined and limited to only one of those sectors: the newspaper publishers and the packaging brand owners and retailers. What process protects unrepresented industry sectors such as ours and others from being targeted by the WDO as stewards and forced to pay fees under section 30?

We would suggest that since a separate subsection—24(5)—has been inserted specifically for blue box funding, perhaps blue box stewards could also be defined in the draft as those who choose packaging or printed materials to deliver their residential consumer goods.

#### 1040

Another point, the waste diversion program: section 24 outlines some of the parameters of a waste diversion program, but because of the lack of definition of blue box stewards specifically and the vagueness of section 29(3) on the fees payable by stewards, several interpretations can arise. Is the funding of the blue box program only to cover the cost of recovery, not what's put into the marketplace? Ministry staff have told us we should regard the fees as a fee for service. The fee for service is a recovery fee, so do materials that aren't being recovered and are going straight to landfill get off scot-free? Is that the intention, that the good guys get penalized? Is the fee going to be material-specific: paper, plastic, glass, metal? We don't know, and we need to. How can we support this when we don't know what it could cost us?

Net operating cost: again, are we talking about a collective basket of blue box goods, or packaging on this side and printed material on this side, or paper fibres on this side and container streams—meaning plastic, glass and metal—on this side? Who decides and what appeal process is available? We don't know.

Where is the credit for revenue contributions? Ontario paper recycling mills contributed, as I said before, \$34.7 million to Ontario municipalities in 1999, almost 60% of blue box revenues, yet they have no representation on the WDO board of directors and no credit for that financial commitment in the fee structure. It's limited to net operating cost, so the revenue factor is set off to one side.

We believe that the paper industry can legitimately argue that paper revenues collectively pay for paper recovery costs, can collectively cover paper recovery costs, and that there is no need for a fee on paper materials. Thank you.

**The Chair:** That affords us about three minutes per caucus again. This time we'll start with the government members.

**Mr Arnott:** In your summing-up comment, you said recycling of paper pays for itself essentially. The price of newsprint and recycled newsprint fluctuates, does it not, depending on supply and demand?

**Mr Mullinder:** Of course.

**Mr Arnott:** So is it fair to say that there are times when it does pay for itself and other times it doesn't?

**Mr Mullinder:** It would be fair to say that obviously the markets for all materials fluctuate, but if you take a time span for cyclical markets, depending on what time period you want to take, overall, paper collectively pays its own way. I'm not just talking about old newspaper.

**Mr Arnott:** I'm at somewhat of a disadvantage because I don't have your written comments, but you've indicated you're going to furnish them to the committee when you get the opportunity.

**Mr Mullinder:** Yes.

**Mr Arnott:** I appreciate that. I would also say to you that the minister is very interested in hearing everybody's views on this. This bill has been referred to the standing

committee, as you know, after first reading, so we will have an opportunity to review your concerns.

You asked a number of rhetorical questions that do merit answers. I think in many cases the kind of assurances you are looking for would be forthcoming through regulation, that process, but we certainly appreciate your ideas and suggestions. Thanks for coming in.

**Mr Levac:** I too want to echo the comments you made because they need to be pointed out. I guess in our business that's not a very good thing to do. I'd just like to ask you bluntly, as it stands, if this legislation exists and there is no clarification of what you're looking for in regulation, if you can't see it and if it's not there, can you support the bill?

**Mr Mullinder:** The bill is enabling legislation and there are future regulations that are going to come in that could impact us. It's really the future regulations that we're most concerned about. Enabling is like a slippery piece of soap.

**Mr Levac:** I guess what your presentation is trying to do is send the message out loud and clear and early that, because of this enabling legislation, these regulations better be reasonable to the industry and to the idea of recycling in general.

**Mr Mullinder:** Yes. I think there are issues that we've raised and others have raised about the enabling bill itself that need looking at.

**Mr Levac:** You mentioned landfill in your chart, and 75% of blue box activity is through used paper. Have I got that correct?

**Mr Mullinder:** Some 75% by weight of the material in the blue box is used paper of one form or another.

**Mr Levac:** I'm assuming that's a very large volume of the blue box activity.

**Mr Mullinder:** Yes.

**Mr Levac:** Do you have any idea or numbers on the percentage of paper that ends up in landfill?

**Mr Mullinder:** That's a good question. It's hard. I would say that the residential paper recovery rate across the province would be roughly between 45% and 50%, including apartment buildings.

**Mr Levac:** Under the circumstance of what can be done with paper that's pretty low, isn't it?

**Mr Mullinder:** That's pretty darned respectable considering what we have in place. But there is obviously room for improvement, specifically increasing capture rate and targeting apartment buildings, which is lagging at this point.

**Mr Levac:** I was going to get to that one, but you've said it and that's good enough for me.

**Mr Marchese:** Mr Mullinder, you said you met with some of the ministry staff and raised these concerns with them. Were you satisfied by them that some of them may be addressed, could be addressed or are likely to be addressed in regulation?

**Mr Mullinder:** The staff have been very helpful. I forgot to acknowledge and thank the ministry for granting us observer status. We still want direct representation, but the staff have been very good. The trouble

is there is nothing there in writing for us to get our teeth into. As I said, staff move on, ministers change—

**Mr Marchese:** And so do politicians, quite rightly, and political staff. Sometimes they are there and sometimes they're not. Usually the political staff are the ones who are closest to the ministers, who take advice from them, and sometimes they disappear as well. Having had some experience as a minister, one knows how that works. Getting some advice and/or opinion from civil servants is not the same as hearing from the political staff of the minister, so that's part of the problem.

**Mr Mullinder:** That's right.

**Mr Marchese:** So when I ask if you have spoken to the ministry, it's one part of the problem, because I'm sure in the discussion some of the staff probably said, "That's not up to us."

**Mr Mullinder:** That's right. Ultimately it's up to the minister.

**Mr Marchese:** And the parliamentary assistant is not always there either, so you don't really know who is passing on information to him and/or to the political staff of the minister. So you really don't know whether you're being listened to.

**Mr Mullinder:** We can only go by what's in front of us in writing and comment accordingly.

**Mr Marchese:** Mr Arnott assures us that some of these things will be addressed in regulation. I guess we'll see down the line what happens.

One of our concerns is that we're told the levy on industry is being designed in a way that will tax recyclables rather than overall waste. In our view, this runs the risk of actually encouraging companies to stop producing recyclable products.

**Mr Mullinder:** That's one of the points we make. You're penalizing the good guys who are in the box.

**Mr Marchese:** You touched that, and I wanted you to speak a little more to it because I think this is serious. It's not just a little thing; it's a big problem.

**Mr Mullinder:** If the levy is going to be based on the recovery cost—and that's the question we're asking because there has been no clear delineation of that issue—then whoever is declared to be the steward of the materials that are being recovered will be paying for those materials. There is no incentive for materials that are currently going to the dump to do anything. There are no landfill fees that they are charged, so there is an incentive to shift to materials which are not paying a fee.

**The Chair:** Thank you very much for coming before us here this morning. We appreciate your presentation.

## CORPORATIONS SUPPORTING RECYCLING

**The Chair:** As committee members will see, we have an extensive number of groups that have actually combined what had been three presentations into the timeslot normally available for two. So our next group presentation will be from Corporations Supporting

Recycling: the Canadian Council of Grocery Distributors, the Canadian Federation of Independent Grocers, the Canadian Manufacturers of Chemical Specialties Association, the Canadian Paint and Coatings Association, the Food and Consumer Products Manufacturers of Canada, and the Canadian Soft Drink Association. I would invite their representatives to come forward and make their deputation. Good morning and welcome to the committee.

**Mr Damian Bassett:** Good morning, Mr Chair and members of the committee. Thank you. I would just like to add to that list that we also are speaking on behalf of the Nonprescription Drug Manufacturers Association of Canada and the Canadian Cosmetic, Toiletry and Fragrance Association. We are pleased to add theirs.

**1050**

My name is Damian Bassett. I'm the president of CSR, Corporations Supporting Recycling. Assisting me this morning is Derek Stephenson, who has been long involved in this issue. It's probably a minimal task that he's performing this morning, helping us with the slides, given his contributions to waste management diversion over the years.

CSR members include many of the largest manufacturers, brand owners and distributors of food and consumer products in Canada, and their packaging and packaging materials suppliers. This again is the list that the Chair initially mentioned and I augmented with a couple of additions. Together, our members and these associations represent the significant majority of all packaging and household special waste materials that will be impacted by Bill 90.

We are here together today because we share a common position: we strongly endorse this bill and we encourage your committee to recommend its adoption by the government of Ontario.

The issue of who should pay for recycling and waste diversion programs in Ontario has been analyzed and debated for more than a decade. It is time to move beyond talking about this problem to solving this problem.

Bill 90 itself is built upon the recommendations developed through a year-long, intensive debate through the voluntary Waste Diversion Organization that included more than 120 of the most knowledgeable people in this province relative to this issue. Through the voluntary WDO program we undertook wide-ranging consultation on these recommendations with municipalities, public interest groups and businesses throughout the province. The result of this exceptional effort is a groundbreaking piece of legislation, based upon the fundamental principle of shared responsibility, which we believe will return Ontario to the forefront of recycling in Canada and internationally. We also believe it sets the framework for a sustainable, economically and environmentally responsible solution to waste management in Ontario.

We recognize that while we represent an exceptionally broad range of the products and companies that will be affected by Bill 90, we do not represent the interests of

all stakeholders. You have heard and will be hearing from many of these other stakeholders in your committee hearings, each of whom will have their own unique and valid concerns. However, in your deliberations and recommendations we urge you to maintain what we believe are the key recommendations put forward to the Minister of the Environment through the year-long WDO process.

First, the legislation must ensure a level playing field by treating competing materials and companies the same and by encompassing all post-consumer wastes addressed by the voluntary Waste Diversion Organization.

Second, industry must maintain the ability to manage its own affairs in determining how to collect the fees that will be required to support recycling and by collecting and distributing these funds through an industry funding organization.

Third, there must be a minimal amount of bureaucracy associated with the WDO and industry's compliance costs. This can best be accomplished by ensuring that Waste Diversion Ontario is truly independent of government and managed by its own board of directors.

Bill 90 will require the development of an industry funding organization—the acronym is IFO—to raise funds to support industry's share of municipal recycling and household special waste programs. The fee structure of the IFO must ensure the widest possible participation of all industries whose products are managed through these programs and not serve as a disincentive to use recyclable material.

As currently structured, Bill 90 could allow for a significant number of free riders, which will raise the costs to those companies who are required to participate. Our goal is to widen the base of industries contributing to the IFO and thereby lower the costs to each individual company. The key to this is properly defining the wastes that will be designated under Bill 90.

The legislation and the regulations associated with this bill must treat industry sectors fairly and on equal terms if we are to ensure this program is sustainable. Ministry of the Environment briefings on Bill 90 have indicated that blue box wastes will be similar to those identified in schedule 1 of Ontario regulation 101, Recycling and Composting of Municipal Waste.

If only those wastes listed within parts I and II of regulation 101 are included within Bill 90, this would mean that some materials already being collected in blue box programs would not be included in the IFO. For example, a metal can that had contained a food or beverage would be included, but a metal can that had held paint or a household cleaning product would not be included. PET bottles used for packaging mineral water would be included, while a PVC bottle used by a competing brand of mineral water would not be included. Limiting the definition of blue box wastes to those included under regulation 101 could exempt as much as 25% of the packaging material from paying fees, potentially leaving those materials that are already being recycled at a competitive disadvantage.

The legislation and the regulations should not allow free riders to shirk their responsibilities or create a disincentive to use recyclable materials. It is our understanding that the Ministry of the Environment has expressed a willingness to consider widening the definition of blue box wastes. In that spirit, we make the following recommendations:

That the regulations designating what constitutes blue box waste be based primarily on those materials listed in schedules I and II of regulation 101, with the following modifications:

(1) Drop the modifiers “food or beverage” attached to descriptions of packaging material types;

(2) Add the modifier “made primarily of” to the descriptions of packaging material types;

(3) Maintain the references to rigid plastic and plastic film, but drop the modifiers referring to specific polymer types;

(4) Add a final category to include “or combinations thereof” in anticipation of continuing innovation in the packaging field.

Following from the principle stated earlier that industry must have the ability to manage its own affairs, there must be an ability under the legislation for industry to control the costs that will be imposed on it under Bill 90. However, Bill 90 exposes industry to three potentially open-ended costs not directly related to municipal recycling and waste diversion programs. These are set out in the following sections of the bill.

Under the description of the responsibilities of Waste Diversion Ontario, and specifically under subsection 4(b), there is a requirement that the WDO “seek to enhance public awareness of and participation in waste diversion programs;” and, under subsection 4(h), “conduct consultations on any matter referred to Waste Diversion Ontario by the minister.”

There is also a requirement under the section on fees, specifically under 29(3)(iii), that the WDO pay “A reasonable share of the costs incurred by the Ministry of the Environment in administering this act.”

While we consider each of these—education, consultation and enforcement—to be important functions under the act, the lack of definition of what might be included within these elements opens the door to potentially uncontrollable costs. Our industries believe that to be sustainable, the costs associated with implementing and administering the programs associated with the WDO and the IFO must be minimized and controlled by the management boards of these organizations. Therefore, we further recommend:

(1) The requirements for public education and consultation should be clearly defined within the operating agreement to be established with the Minister of the Environment for each designated waste;

(2) The costs of these programs must be reasonable, transparent, fair, and built into the business plans and fees associated with the appropriate IFO;

(3) Any fees paid to the Ministry of the Environment must be directly related to costs incurred to enforce the act.

The industry sectors that we represent are ready to shoulder their fair share of the responsibility for managing their waste materials and to get on with the job of helping our municipal counterparts create sustainable recycling and waste diversion programs. However, Bill 90 is silent on the key issue of when IFO fees are to be collected and when payments are to be made to the appropriate program operators.

It must also be recognized, however, that the fees payable to the IFO by obligated companies will represent new costs to these businesses. Considerable detailed planning work is still required to determine what these fees will be and how they should be collected, and then to put the infrastructure in place to collect and distribute the money. Adequate time must be allowed between the time when the minister identifies a designated waste and when funds must be paid to program operators. We believe both industry and municipalities require greater clarity on when funds are expected to flow to the IFO and through the IFO to the appropriate program operators. In that spirit, we make the following recommendations:

(1) That Bill 90 include a generic reference to allowing an appropriate time period for development of a management program for a designated material;

(2) That a request by the minister to the WDO to establish a program for a designated waste state a specific time period between when a waste is designated and (a) obligated companies are required to submit fees to the appropriate IFO, and (b) the IFO is required to pay funds to appropriate program operators;

(3) That the minister outline an overall timetable by which specific materials are expected to be designated.

#### 1100

Our industries are committed to the establishment of municipal recycling and waste diversion programs that are fair and efficient. We recognize, however, that Bill 90 is enabling legislation, which by its very nature leaves many of the critical details of how these programs will actually work undefined. While this lack of detail results in some uncertainty for industry and municipalities, our members welcome the flexibility this bill allows for developing industry self-managed solutions.

In order to address some of the questions that municipalities are likely to have regarding how our industry sectors will respond, and as a demonstration of our commitment to making Bill 90 a success, we are able to make the following commitments today:

If the minister requests that the WDO establish an IFO to address packaging and household special wastes, our industry sectors will work with all other obligated industries, including those in the printed paper sectors, to create a single, coordinated IFO encompassing all of these materials.

This IFO will be created and will submit its proposed program to the WDO no later than 90 days following the request of the WDO;

This program will be based upon a 50-50 cost sharing formula for packaging and those components of household special wastes represented by the Canadian Manufacturers of Chemical Specialties and the Canadian Paint and Coatings Association members, as per the recommendations set out in the voluntary WDO report dated September 2000;

The IFO will make initial payments to municipalities within 90 days of approval of the program by the WDO; and

The program of the IFO will allow for exemption or a minimal compliance cost structure for small businesses, in the interests of minimizing total industry compliance costs.

Bill 90 represents significant challenges for each of our industry sectors, as it will for other obligated industries. Nonetheless, our industries are prepared to get on with the task at hand and do our fair share in maintaining economically efficient, environmentally sustainable recycling and waste diversion programs in Ontario.

I would now like to take some of the remaining time to introduce my colleagues from the other industry sectors represented here today and invite them to address some comments to you, and then with them answer any questions your committee may have.

The first one to join me here at the table is Justin Sherwood, who's vice-president of government affairs for the Canadian Council of Grocery Distributors.

**Mr Justin Sherwood:** Good morning. I'd like to thank the committee for providing me with the opportunity to comment on Bill 90 this morning. My name is Justin Sherwood and I am the vice-president of food service and Ontario public policy for the Canadian Council of Grocery Distributors.

The Canadian Council of Grocery Distributors is a not-for-profit national trade association representing the interests of the food distribution and retail grocery industry across Canada. Our membership is composed of small and large grocery retail operators, wholesale grocers and food service distributors. We represent approximately 85% to 90% of the \$56-billion total sales volume of grocery products distributed in Canada and 75% of the approximately \$10-billion total sales volume of the food service distribution industry in Canada. In Ontario, our members employ approximately 150,000 individuals and are responsible for approximately \$18 billion in sales.

The Canadian Council of Grocery Distributors supports Bill 90 and urges the committee to recommend its adoption by the government of Ontario. We support Bill 90 for all the reasons previously outlined by Damian. I would, however, like to take a few minutes to cover off two particular points of interest to the Canadian Council of Grocery Distributors, especially the issues of consultation and advance notification.

The retail grocery environment encompasses a broad range of products and packaging types, and as such retailers can be potentially impacted by a number of waste management issues. Issues can range from house-

hold special waste to printed materials, to industrial-commercial waste, to organics. In addition, further complexity is introduced when you consider the food-service and wholesale distribution components of our members' operations. These issues cut across the various waste diversion programs and industry funding organizations envisioned under Bill 90 and underscore the need to include specific requirements for consultation and advance notification.

Given these complexities, we recommend that the following modifications be introduced into Bill 90: the minister must clearly define what is expected of the WDO and the IFO in regard to consultation. The reasons for this are threefold: first of all, to ensure adequate time is allowed to inform and educate the companies that will be obligated under Bill 90; second, to ensure that potentially obligated parties are consulted and have an opportunity to provide input into the IFO; and third, so that consultation costs can be clearly identified and approved by the WDO and the affected IFO and these costs built into the fee structure.

In regard to the issue of advance notification, we respectfully request that adequate time be given for careful planning, consultation and implementation for any new designated waste program. We have been able to make progress quickly on the blue box wastes largely because of our extensive experience in Ontario. Notification is required as early as possible before other materials are designated. Once a waste is designated, adequate time must be allowed for the detailed planning work required to implement cost-effective programs to inform and educate our members and raise the funds necessary that will be required to meet our obligations.

With these and the changes outlined by others in our group today, our members are committed to making Bill 90 a success.

I'd like to now ask Laurie Currie, the vice-president of public policy and scientific affairs from the Food and Consumer Products Manufacturers of Canada, to say a few comments on behalf of our association.

**Ms Laurie Currie:** Good morning and thank you for the opportunity. My name is Laurie Currie. I'm with the Food and Consumer Products Manufacturers of Canada. I'm the vice-president responsible for public policy and scientific affairs.

FCPMC is the industry association representing 180 Canadian-operated member companies that manufacture and market a wide array of food and consumer products that are integral to daily life. The industry generates over \$18 billion annually in GDP and employs 250,000 Canadians. More than 80% of our members are headquartered within a 50-kilometre radius of the greater Toronto area. FCPMC members have been one of the original and voluntary financial supporters of Ontario's recycling programs, starting back in 1988. Through the efforts of CSR we have continued to support the goal of securing broader industry program participation for these efforts. We appreciate the leadership shown by this government to move this goal closer through Bill 90.

FCPMC strongly supports the recommendations that CSR is making today, and there are three principles of particular importance to our membership: (1) finding a funding solution that is broadly shared across industry; (2) ensuring a level playing field for those who are contributing; and (3) making sure that the system continues to be cost-efficient and administratively lean. The base of packaging included must be broadened, as CSR has recommended. Otherwise, the food and beverage industry will be burdened by the costs that other brand owners should share.

Thank you for the opportunity. I'd like to now introduce Ed Berry, acting president of the Canadian Manufacturers of Chemical Specialties Association.

**Mr Edwin Berry:** Thank you, Mr Chair, thank you, committee, for hearing us. My name is Edwin Berry. I am the acting president of the Canadian Manufacturers of Chemical Specialties; that's CMCS. I'm also speaking on behalf of the Canadian Paint and Coatings Association, CPCA. With me today, if you have technical or business questions that might need to be answered, I have two colleagues. One is Mr Stephen Rathlou, a member of CMCS, manager of regulatory affairs for SC Johnson with manufacturing facilities in Brantford, Ontario; and Mr Ron Hoare, who is the CEO of Para Inc, a member of CPCA, with manufacturing facilities in Brampton, Ontario. Both of these gentlemen have served as voluntary participants in the Waste Diversion Organization and other bodies dealing with post-consumer waste policy and technical matters, as have many of our member companies in both of the organizations.

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CMCS represents a large number of manufacturers, mostly the largest brand owners, manufacturers and distributors of personal care and household products in Canada. Most of our members have significant operations in Ontario.

The goods produced by these companies are familiar to all of you. I think we need to realize that we're talking about very familiar materials. They're in your super-market. They're in the kitchens, bathrooms, laundry rooms and garages of your homes and your apartments. They include household cleaners, laundry products, personal insect repellents, disinfectants, camping fuels and windshield washer liquids. They're all very familiar.

The products of the paint and coatings association, as their name would tell us, are also very familiar. Their members are the largest and best-known paint and coating brand names in Canada and we know their products well.

Most of these products come in packages—that's the first thing to understand about them—made from steel, aluminum, glass, paper or plastic, many of which are already recycled, and you've heard something about this already: the ongoing recycling. You would have heard the term HSW a number of times around this discussion this morning. This refers to a small quantity of residues of some of these products, that when the homeowner needs to dispose of them, a few are not suitable for

including in the regular garbage collection. They require special management. That's the management of HSW.

Our two associations are involved in both aspects, both packaging and HSW. First of all, our two associations endorse fully the comments made by Damian Bassett of CSR, who has dealt very comprehensively with the blue box waste issue, as have other speakers. We would like to add to those comments and recommendations by speaking directly to the management of household special waste as it is addressed under Bill 90.

First of all, why do we support Bill 90 in its aspects speaking to HSW? We believe that Bill 90 will set the framework for a sustainable and economically and environmentally responsible solution for the management of all domestic solid waste in Ontario, but in particular we consider that Bill 90 has a very important role as the potential to deliver much-needed rationalization and harmonization to the management of HSW. However, to do this, we believe that two key modifications to Bill 90 are required specifically addressing HSW.

First, we believe that HSW needs to be included directly in Bill 90 as a designated waste, in the same way that blue box waste is addressed directly and specifically, and as was recommended by the WDO and our own associations in our participation in the WDO. We recommend then specifically that subsection 24(5) of Bill 90 should be modified to read:

"A waste diversion program developed under this act for a designated waste currently managed by municipal waste management systems shall not provide for payments to municipalities that total more than 50% of the total net operating costs incurred by the municipalities in connection with the program."

This would deal with two things. It would draw in HSW, because most municipalities already do operate those programs, and it would deal with the concerns of the municipalities about the 50% that you've heard about.

Our second recommendation deals with justifying flexible management options for HSW after it's been collected. One of the features of HSW is that unlike most blue box waste, we're not primarily concerned with managing it in order to divert large quantities of material from the municipal stream. We're only looking at 1% of the municipal stream. This is not a contribution to massive diversion. The issue of concern is that those HSW components that can't be reused or recycled for technical reasons should be diverted in the most efficient and environmentally acceptable manner. Some HSW materials simply can't be recycled, either efficiently, economically or even at all. For example, fuels, solvents and some paints are much better looked after by using them at low concentration in blended fuel for selected industrial uses, for example in cement kilns.

Unfortunately, as subsection 24(2) is written in the bill, it places considerable constraints on this option by discouraging the promoting of burning per se. Thereby it tends to leave no other option than secure landfill burial for the management of these few difficult wastes.

What we would recommend is that section 24(2)1 of Bill 90 be modified so that an IFO should not promote the burning of designated waste except for energy and/or materials recovery in facilities approved by the minister. We feel that addresses the matter of flexibility for dealing with these wastes and is a good use for these wastes, and control by the minister over where they go, how they're used and that they are not just simply dribbled into other forms of fuels.

Overall then, with these two modifications, we feel that we are fully in support of Bill 90. We would like to thank Mr Chairman and the committee members again for this opportunity. We will be happy to answer your questions when the time arises, or send in written answers at a later date.

**The Chair:** Thank you very much for that very interesting and comprehensive presentation.

**Mr Bassett:** Mr Chair, we have one additional speaker.

**The Chair:** Oh, forgive me.

**Mr Bassett:** The president of the Canadian Soft Drink Association, Gemma Zecchini, just needs a couple of minutes.

**Mr Marchese:** May we have a copy of your submission, sir?

**Mr Bassett:** I have a copy, yes.

**Mr Marchese:** Could you pass that out?

**Mr Bassett:** I will, indeed.

**Ms Gemma Zecchini:** Thank you, Mr Chairman and ladies and gentleman of the committee. On behalf of the Canadian refreshment beverage industry, which represents soft drinks, purified water, juices and alternative beverages, I would like to add my voice of support to the recommendations for amendments put forward by my colleague Mr Bassett on behalf of CSR. I would like to use my brief time before this committee to emphasize one point, and that's a principle that we, as industry, believe is fundamental to the success of what Bill 90 is trying to achieve.

The year-long multi-stakeholder consultations that preceded the delivery of the WDO report to the Minister of the Environment last December firmly established the critical importance of providing for a level playing field for all companies and all packaging materials. In order to fulfill its promise as enabling legislation, Bill 90 must enable maximum participation by all industry players in order to honour the principle of fairness that's at its core.

To the extent possible, the legislation should ensure that from day one the fundamentals are in place so that the funding solution for the blue box is broadly shared across many industries and among a diversity of packaging types. I think it's important to point out that in its current iteration, Bill 90 will not achieve this.

Unless the definition of blue box wastes is amended, as Mr Bassett has suggested, the financial burden will fall disproportionately on those companies which are responsible corporate citizens and have provided and will continue to provide significant funding to sustain multi-material recycling in this province. In other words, the

bill in its current form allows for substantial abuse by so-called free riders. This creates what amounts to a competitive disadvantage for certain industry players, surely a consequence that is at cross purposes to the intent of sound legislation.

Lastly, and moreover something that is as important to industry as it is to municipalities, the government must avoid creating reverse incentives that undermine both the spirit and intent of the waste diversion organization. Failing to specify all packaging types as blue box waste effectively creates a loophole that may inadvertently encourage certain industry players to avoid all financial responsibility by packaging their products in non-recyclable materials that are not collected in the blue box, but end up in landfills instead. As we heard from AMO this morning, that would be a consequence which would place unwanted and undue burdens on municipalities.

The Canadian Soft Drink Association strongly supports the recommendations CSR is making today. In particular, we feel it's imperative that government levels the playing field so that costs of the municipal recycling are shared, and shared fairly. It's important to point out that industry is not asking for exemptions from its obligations, but asking for fairness. We also applaud the government for its leadership in moving us closer to the goal of a sustainable multi-material recovery system in Ontario.

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**The Chair:** That leaves us with approximately six minutes per caucus. We'll start with Mr Levac.

**Mr Levac:** Thank you very much for your dedication to this particular issue regarding Bill 90 and your consultation all the way through. Obviously, getting together with that many organizations and groups is a feat in itself. So I appreciate that spirit and the effort you're making.

Just a couple of housekeeping things. We definitely welcome Stephen from the great riding of Brant regarding SC Johnson's contributions to our community, a very conscientious community that does an awful lot, not only in charitable donations but in ensuring that our environment is taken care of. I want to put that out there. Thank you very much for that. You've got to take advantage, Rosie, whenever you can here.

**Mr Marchese:** I understand.

**Mr Levac:** I want to come to Bill 56 for a reason. I know you're speaking of Bill 90, but Bill 56 doesn't take care of some of the issues that even Brant has gone through where emergencies take place. Have you discussed with your group emergency circumstances in recycling that take place in unique circumstances which would require government intervention? The example I use in 56 is a brownfield site which catches fire through arson and is declared an emergency by the health unit, by the city, yet the government is unable to participate in that, even under a brownfield site program. Is there such an animal that could take place in the recycling circumstance that needs to be addressed?

**Mr Bassett:** I think you speak to one of the strengths of the associations represented here at this table, in particular as they galvanize around an issue like recycling. Traditionally, the industries have pulled together to help certain material types when they've had difficult circumstances, either with collapsed markets or, more recently, the economic downturn suffered by Consumers Glass. The product companies, the brand owners, charge our organization with showing leadership in that area, bringing the stakeholders together and finding creative solutions to move material so that municipalities aren't burdened with stockpiles of unwanted commodities.

**Mr Levac:** Is there anything you've discussed in Bill 90 that could be improved to address that circumstance, or would you rather deal with it in the way you've just described?

**Mr Bassett:** I think the beauty of market forces is that they tend to find their own solutions. The creative energies of the people who make a living working with these commodities and processing the commodities—previous speakers, even from the Ontario waste haulers' association, bring an awful lot of expertise. I think our history says that's a good way to solve the problems.

**Mr Levac:** I appreciate that and I'm not one for necessarily making legislation for the sake of making legislation, but I would probably hold out that in the event that that takes place, we need to have something in place to take care of those emergencies.

You indicated early in your presentation that you want to shoulder your fair share. How do you respond to an industry that has gone above and beyond recycling blue box programs and recycle 80%, 90% or almost 100% under their own cost and may say to you, "It's rather interesting that you're only looking at footing 50% of the bill for recycling and we do 100% of it and we don't need a blue box program. We've created a way to recycle all our own wastes"?

**Mr Bassett:** We've always applauded those industry sectors that for commercial reasons have established a closed-loop distribution system, where they have an economic need to have their containers or their packaging back. We think that's fabulous, and on a voluntary basis we would support and encourage that wherever it can exist. The brand owners and organizations we represent are dependent upon the curbside system to efficiently see that their packaging is appropriately managed in this environment. That's what this Bill 90 represents. It's bringing together all the stakeholders who are dependent upon the curbside system.

**Mr Levac:** Having said that, would there be an opportunity for them to eventually evolve out of that and is there any encouragement that could be done? I know some of the people who participate in the blue box did their own at one time and basically stepped away from it.

**Mr Bassett:** Again, I think the market forces, the commercial needs—the customer is always right. That's the reality that creates the situation you describe where the product goes back to the point of purchase. It's the same situation that creates the alternative in the household for efficient—

**Mr Levac:** It's up to all of us to encourage that.

**Mr Bassett:** The customer is never wrong.

**Mr Levac:** How am I doing, Mr Chairman? Just at the end?

**The Chair:** You're really out of time. One quick one.

**Mr Levac:** One quick last one. What is the possibility of the industry getting together before the IFO and looking at packaging in that way? I'm assuming that's being encouraged and being done as well, because there are complaints out there that you've got triple packaging and it's creating waste that's not necessary. Comment on this.

**Mr Bassett:** Again, I think industry is constantly managing its costs, and one of its major costs is the cost of packaging. One of the previous speakers referenced his participation in the national packaging protocol, and that analysis showed that industry since 1988 had reduced by over 50% its use of packaging, and yet is delivering more goods and services today than it did 12 years before. It's an economic determinant that good industries are constantly practising. So it's a bit of a myth that they're not reducing their packaging.

**Mr Levac:** I appreciate it. Thank you for your patience, Mr Chairman.

**Mr Marchese:** Thank you, all of you, for your presentations. Mr Bassett, you write on page 3, "The legislation and the regulations should not allow 'free riders' to shirk their responsibilities or create a disincentive to use recyclable materials." I agree with that and some of you have spoken to that. Then you say, "It is our understanding that the Ministry of the Environment has expressed a willingness to consider widening the definition of 'blue box' wastes." On what do you base that?

**Mr Bassett:** One of the beauties of the WDO and even the evolution of Bill 90 has been the constant consultation we've had with all the stakeholders. I think early on it was discovered that regulation 101, if it was to be the appendix for this bill, was inadequate. So in consultations with the ministry, it's been discussed as an option to find a way of modifying 101.

**Mr Marchese:** I agree with you. Have you had some political understanding that that was the case, or just civil servant understanding?

**Mr Bassett:** I unfortunately spend a fair amount of my life at Queen's Park and I've had the chance to even speak to people in your party on this subject. I'm trying to solicit support wherever I can.

**Mr Marchese:** No, I agree with you. I was just thinking, have you talked to Mr Arnott or other political staff of the ministry in terms of their understanding and perspectives?

**Mr Bassett:** I've had those discussions.

**Mr Marchese:** On page 4, you talk about supporting costs related to education, consultation and enforcement. In terms of your recommendations you talk about, "The costs of these programs must be reasonable, transparent and fair." What would be unfair in your view?

**Mr Bassett:** One of the beauties of Bill 90—and I'll take a positive and spin it into a potential negative—is

that I think it was conceptually designed to be modular, and it is the intention to designate future wastes and to bring them in. Our position is that we, as a packaging and printed paper community, worked long and hard and funded the evolution of the current recommendations. Were the minister to decide tomorrow that another waste stream—let's just say tires, as an example—should be brought in, we don't think it's fair to burden our membership with the costs associated with consultation, education and publication around that particular designation.

**Mr Marchese:** Right. OK, that makes sense. One last question?

**The Chair:** One.

**Mr Marchese:** You raised some issues about the myth of not reducing packaging, and since 1988 you've said you've done that for economic reasons, obviously. It makes sense. Some people argue that the industry should pay the entire tab, and if designed properly, this would encourage them to reduce the amount of trash they send to the landfill and make the polluters pay. What's your response to that?

**Mr Bassett:** We've negotiated, I think, long and hard with a very formidable partner in the municipalities of Ontario and the non-governmental sector to arrive at what we think is a unique, made-in-Ontario 50-50 solution. I'm not going to be the person to untie that bow.

**Mr Arnott:** I want to thank you as the representatives of the CSR—where have we heard that acronym before?—for coming in today to express your support for Bill 90. It's rather historic, I think, to have this occasion. I think back to my first election in 1990. Recycling was a big issue and my NDP opponent was talking about it at an all-candidates meeting. She talked about the need for the manufacturers to accept their onus of responsibility for the garbage that they were creating. If I'm not mistaken, I think I agreed with her, and here we are 11 years later and you're actually doing that. You deserve enormous credit and you deserve to be commended for doing this, for accepting the responsibility for—

**Mr Marchese:** Sharing.

**Mr Arnott:** —sharing, yes, but accepting responsibility for your part of it and the economic costs which, of course, would be passed on to consumers in some form. I think it's a very important step that we are taking today and we do appreciate your—and also coming together as an industry. I think it's a phenomenal achievement, what you've been able to broker, Mr Bassett, and you all deserve credit for the work you've done.

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I like the way you've outlined your brief, too, because you talked about your support, why you support it, the fundamental principles upon which your support is based and your positive suggestions, your constructive suggestions as to how we can improve it, and then concluding with your commitments as to how we can work together in the future. So I want to thank you for that.

One of the presentations talked about burning of solvents in cement kilns. I just wanted to ask about that a

little more. You said that's the most acceptable environmental solution in some cases. What do you base that statement on?

**Mr Berry:** There have been many years of work and research around the world, including in Canada—indeed, we probably started in Canada by pioneering much of this—in which studies show that certain classes of cement kilns that already have extremely low emissions are capable of destroying many organic materials completely. Solvents that aren't contaminated with totally undesirable things like PCBs could be readily dealt with that way. Waste fuel is a problem for HSW collectors, because they often end up getting waste gasoline, which can't be dealt with very readily. They can't be recycled. There are some paints that are high in organic content which can be put through a cement kiln without any problems. There's a very solid, substantial basis of science that supports this. Does that answer your question? I think it's well rooted in science and technology over almost a 20-year period, including in Ontario.

**Mr Miller:** I have just one minor question of Mr Bassett on his point 5, "The program of the IFO will allow for exemption or a minimal compliance cost structure for small businesses, in the interests of minimizing total industry compliance costs." Could you expand on that? What do you classify as small business and how do you see that working?

**Mr Bassett:** We too, like the architects of Bill 90, haven't totally done our work. The job we have to do is get together and really determine what an appropriate level is to establish a threshold. The policy here is that everybody should pay, but we recognize that it may not make sense to spend \$1,000 chasing after \$50, so we want to take a look at the stewards who become designated and then determine whether it's square feet, volume of sales, certain materials generated, and say that below that level it doesn't make sense to go after them. They're not creating a competitive imbalance. It's more about efficiency than it is about fairness.

**The Chair:** Thank you very much again for coming in and making a very detailed presentation to us. We appreciate your position. Certainly, should you have any further thoughts, I know the ministry and the committee would be pleased to receive them in writing subsequent to this day.

## ENVIRONMENT AND PLASTICS INDUSTRY COUNCIL

**The Chair:** Our next presentation this morning will be from the Environment and Plastics Industry Council. Good morning and welcome to the committee.

**Ms Catherine Cirko:** I'm going to use the overhead projector, if you can see. I'll pass around right now copies of my presentation so you can follow along if you wish. As well, we are passing out our brief and some background information on EPIC.

Today I'm joined by Faris Shammass, who is the executive director of the Ontario region for the Canadian

Plastics Industry Association, as well as Mike Hyde from Dow Chemical. Dow is one of the members of our organization. Mike is also chair of our public affairs committee.

I'm Catherine Cirko and I'm the director general of EPIC. We are a council of the broader Canadian Plastics Industry Association. I want to thank the committee for giving us the opportunity today to speak to you on Bill 90.

First of all, I want to give you some background on who we are and why we are here today. The broader organization really is representative of the front end of the supply chain of products and packages. We represent material suppliers, processors, equipment suppliers and mould-makers. All our members provide products as well as packaging to a host of our important sectors in the economy of Ontario, and that is in automotive, electronic, construction, food and consumer products as well.

Just to give you an idea of the breadth and expanse of our industry, in 2000, shipments—that's total dollar value of shipments in all those sectors—amounted to \$18 billion, and the industry employed 85,000 residents of Ontario, company residents. Across Canada, there are some 3,500 companies doing business in Ontario, and our organization, the Canadian Plastics Industry Association, represents about 60% of the total shipment output of those. So we are definitely representative of the plastics supply industry.

Second, I want to give you a really brief overview of who EPIC is and what we've been doing to help municipalities on waste management. More detail is in the brochure you have in front of you on all our contributions to date, but essentially our overall role is to support responsible waste management. We provide a number of tools and guides for municipalities. We engage in demonstration projects. In part, there was a demonstration a long time ago that led to the actual collection of bottles in municipal curbside systems, and that was done in partnership with ourselves and the ministry.

We also conduct research into more efficient recovery and recycling. We have a number of computer models that try to reduce the cost to municipalities at the point of collection, as well as processing recyclables.

We also carry out the development of new market applications for recycled materials. For example, we have pioneered the use of recycled plastic film from curbside programs back into bags: grocery bags, Liquor Control Board carry-out sacks and garbage bags. So we have evolved the technology to be able to do that, and we believe we have exercised our part in the supply chain in terms of the contribution to waste management.

Turning to the plastics industry and its relationship to its customers, I just want to elaborate on some key things here. The plastics supply industry is there to meet the specific requirements based on the product properties of our customers. The customers of the plastics industry decide what material will be used in a product or a package. For example, automotive manufacturers have final say on parts used in their vehicles. The packager of consumer products decides on the shape, size, colour and

material to be used for his product based on the performance that package has to achieve. Even the design of the lowly what we might call carry-out sack is stipulated by the retailer. As well, the design for recycling or incorporation of recycled content is not the choice of the plastics industry. We develop the technology, we can do it, but the downstream customer is the one who has to require it.

I want to get specifically to our position on Bill 90. Essentially, we agree with the intent of Bill 90. However, we do have suggestions for amendments and modifications to Bill 90 as it stands today. Specifically, we'll be talking about suggestions for modification in the following areas: the definition of "steward"; the definition of "blue box waste"; observers, subsection 3(3); fees from industry; and waste diversion programs.

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With respect to the definition of "steward," you've heard today from previous speakers that the definition of "steward" is fairly general and very broad. What we have recognized is that the minister probably would like it to be broad, because we're not just talking about blue box waste; we're also talking about future waste that the minister may in fact want to designate at some later date. We recognize that there's probably a need by the minister to have some flexibility to choose the obligated party on a case-by-case basis.

But who pays for blue box recycling? As you've heard and as Mr Arnott has said, it's been a 15-year discussion and there have been various details around that discussion over those 15 years. That discussion essentially culminated in a recommendation by the Waste Diversion Organization, in its report dated September 2000, that the obligated party should be the one who essentially decides on what packaging to use, and that recommendation was provided to the minister. So there have been specific matters around blue box recycling and who pays for it where we feel that perhaps Bill 90 could be a little more specific on the obligated party with respect to blue box waste.

We are recommending that the definition in subsection 29(2) be amended to take the approach that was taken in subsection 24(5), which essentially got very specific on blue box. It actually said industry's share will be not more than 50%. What we're saying is take a similar approach with respect to subsection 29(2) and add to the end of that clause that for any waste diversion program developed under this act for blue box recycling, the steward should be the one who decides which packaging is to be used, in recognition of the very valuable and important role that the user of packaging has.

Moving on to the definition of "blue box waste," you've heard today from others the need to have a level playing field among all materials, products and packaging etc. You don't want to have set up a regulation that may provide some favour toward one material versus another.

We agree very much with CSR that the regulation must capture all consumer product and packaging. How-

ever, we don't think that amending regulation 101 would be the preferred route. As you've heard before, there are various unlevel playing fields in regulation 101 now. Even with the modification suggested by CSR, there still would be anomalies. I just give these examples: even with their modifications, you would have a plastic carry-out bag levied and a paper-equivalent bag not; you would also have paper wrap and pulp egg cartons excluded and you would have plastic wrap and plastic egg cartons included. It's just another example of the unlevel playing field and certainly we do not want to support anything that would set that situation up. There are a host of other examples, but I have not alluded to them here.

One suggestion was to modify regulation 101. Our concern now is that schedule I of regulation 101 is the schedule to an overriding regulation. The overriding regulation does require municipalities to separate those materials for collection in regulation 101, and the inference is for recycling. You've already heard today—and we support that—that not all materials are recyclable. So if you have a regulation that requires a separation of non-recyclable materials, that is adding cost. We have to recommend that regulation 101 not be used, if that is under consideration right now by the ministry, and that a separate list be created in a regulation to follow that is going to support Bill 90. This list, as we have indicated, should be designed to capture most packaging materials as a group so that there is a level playing field.

Moving on to the next item, with respect to observer status, right now Bill 90 sets out the section on observers. It does include a few observers right now. We have looked at that and essentially we feel it would be useful to have a representative of the plastics packaging sector there based on our significant role in Ontario's economy and of course based on the real interest of municipalities and ourselves to do our best to try and divert plastics from the waste stream.

We are not seeking status on the board, because we believe that board membership should be reserved for those who are contributing financially to dispersion initiatives.

With respect to fees from industry, essentially we support the intent of Bill 90 to permit industry and the specific IFOs to determine how fees will be generated. We also note the role that the ministry and the WDO are going to have in diversion programs. All we're saying here is that we're not trying to be nitpicky, but there should be clear rules and guidelines with respect to cost recovery for costs incurred by both the ministry and the Waste Reduction Organization. So we recommend that clear principles and criteria be established for the administrative cost recovery aspects from those two organizations. In addition, the Ministry of Finance and Management Board in consultation with the material industry develop fee-specific principles and criteria for cost recovery by MOE and the WDO.

Last, with respect to waste diversion programs, under section 24(1), we strongly believe in an integrated approach to waste management, that there is no single

option to waste management. You can't recycle everything. It's a combination of options, and you have to look at those combinations, what they cost and what sort of environmental benefit they provide. There is not going to be one solution; it's going to be a trade-off. But we would love to have municipalities continue to have the opportunity and ability to consider all options. All we're saying here is that in any future regulations—as we see in Bill 90, it's very performance-based—we'd love to see continued regulations be more focused on performance and not be overly prescriptive with respect to what municipalities can consider and what they cannot. The strategy for one municipality may be different for another.

That concludes our presentation. I am joined here, as I said, by Mike and Faris, to help respond to your questions.

**The Chair:** That affords us about a minute and a half per caucus. This time the rotation will start with Mr Marchese.

**Mr Marchese:** In terms of membership or status as observers, I'm assuming there will be many sectors that will be excluded, and you are one. How do we make it possible to include everybody who believes they are important to be there as observers? How do you deal with that?

**Ms Cirko:** You've made a very good point, and I'm sure you've got a number of requests.

**Mr Marchese:** Not me; them.

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**Ms Cirko:** You've probably had a number of requests to be a participant on the actual board, so you've had to struggle with that. Again, I think plastics are a new and emerging material that—

**Mr Marchese:** I'm not disagreeing. You don't have to explain that. You make a good point. I'm just wondering how you would include all the people who feel they need to be there, that's all. I don't know how the government is dealing with that; maybe Mr Arnott knows, but I don't.

**Mr Mike Hyde:** May I just comment?

**Mr Marchese:** Sure.

**Mr Hyde:** There is no silver bullet here, I guess, because you're going to get many requests, but I do believe that the key sectors that make a request to become observers should be granted that. Perhaps it can be done through open dialogue, through information where you don't have to attend every meeting but in fact the minutes of the meetings can be copied and there is some conduit in to the board if you have questions or comments or suggestions, that type of thing. That's a secondary suggestion. It wouldn't be as good as being the observer inside the room, but I understand you can't have an audience of thousands back there.

**Mr Marchese:** It's just a question for the government, because I don't know how they're dealing with that.

You write that the goal must be environmental and economic sustainability with social acceptance. What do you mean by that?

**Ms Cirko:** Certainly at the municipal level, municipal officials have to take into consideration and consult with

their residents. That's just one input into the decision-making process, along with what the costs of programs are, what the environmental benefit is etc. All I'm saying is that it's complex. Municipalities have to consider all those factors, but as well they have to properly deliver a program that's acceptable to the residents, so it's just one feature.

**Mr Marchese:** I agree with that. Thank you.

**Mr Miller:** Thanks for your presentation today. You made a comment to do with regulations, saying that they should be not overly prescriptive. Generally I am in favour of that to do with most regulations, but can you expand on how you see that working in this case?

**Ms Cirko:** Mike, do you want to answer that?

**Mr Hyde:** Bill 90 is certainly written as a performance specification. There are some specifics, but it is basically a performance specification. What we're hoping is that the regulation that is put together to support Bill 90 is that performance type of regulation as well, where it doesn't specifically say that you must recycle X per centage of a product, for instance, because in fact that X percentage may not be the right number. So "Recycle as much as you want with continuous improvement, or as much as you can with continuous improvement." That type of thing is what we're hoping for in the regulation. Does that answer your question?

**Mr Miller:** Yes, I guess so. Do you set a goal that you strive for then? Is that how you accomplish it? You set a goal and try to reach it that way?

**Mr Hyde:** Yes. I think the goal must be qualified, though. If you look at places in Europe or you look at other places even in Canada, the goal is set for X percentage to be recycled by year such and such. That still is very prescriptive. Performance would be more, "If it is economically, environmentally and socially wise to do so, reach the goal of this, or divert it from waste in other ways." Something like that is what I'm thinking of as terminology you might use in the regulation.

**The Chair:** Ms Mushinski, very briefly.

**Ms Mushinski:** Yes, I shall be brief. You mentioned that reg 101, whose intent is to direct municipalities on which materials to collect for recycling, should not be used. Can you tell me if reg 101 actually is directing municipalities to recycle materials that are not recyclable right now?

**Ms Cirko:** Reg 101 did a couple of things. It did require a minimum number of materials to be recycled, and they are recyclable. It also provided a supplementary list which listed a number of other materials on it. I would say all of those were potentially recyclable. What we're suggesting is that by modifying reg 101 to go beyond that you are modifying it to capture as well non-recyclable materials.

**Mr Levac:** Thank you very much for your presentation and your obvious interest in Bill 90. Have you had an opportunity to vet these recommendations that you've taken a position on with Bill 90 with government bureaucrats along with the politicians involved?

**Mr Hyde:** Yes, we have.

**Mr Levac:** Have you received a reasonable response back, saying that they'll take those under consideration or giving you any rationale why they can't?

**Mr Hyde:** I'll respond, Cathy, if I may. While Cathy was on vacation I did that specifically. We have pushed back on some of them, but we were encouraged to include several that we did include. We decided that it's still a strong belief of ours, so we wanted to present it to the committee as well in its entirety.

**Mr Levac:** Very good. Your background material indicated an education component of the plastics industry, grade 3-4, I believe. I've seen it in the past—peanuts, I believe.

**Ms Cirko:** Yes, that was part of it. That's one of our original concepts.

**Mr Levac:** Right, and moving on from there—

**Ms Cirko:** We have embellished and moved on from there, correct.

**Mr Levac:** Do you agree with part of the legislation that's been referred to earlier: there needs to be an education component to the recycling program to encourage the public at large to participate in it, and that monies come from the participants?

**Ms Cirko:** Certainly support for broader communications and education is warranted and required.

**Mr Levac:** Thank you, Mr Chairman. I appreciate the time.

**The Chair:** Thank you for your presentation here this morning. We appreciate your coming forward.

With that, committee members, the committee stands recessed until 1 o'clock.

*The committee recessed from 1156 to 1304.*

**The Chair:** Good afternoon. I'll call the committee to order. We'll continue with our deliberations on Bill 90 and Bill 56.

## TORONTO ENVIRONMENTAL ALLIANCE

**The Chair:** Our first presentation this afternoon is the Toronto Environmental Alliance, if they could come forward to the witness table, please. Welcome, and just a reminder that we have 20 minutes for your presentation this afternoon.

**Mr Gord Perks:** Members of the committee, let me begin by thanking you for taking the time to listen to us today on this important matter. My name is Gord Perks. I'm the director of policy and communications at the Toronto Environmental Alliance, and with me today is Katrina Miller, who is our waste campaigner.

For several decades now, progressive governments have been bedevilled by the problem of solid waste management: headlines, funding fights and endless political battles to try to figure out how we will finally tackle the problem of solid waste here in the province of Ontario. For decades we have made small increments in progress but we continue to lag behind some of the more progressive jurisdictions in waste reduction, both in North America and around the world.

The elements that are necessary for us to catch up to those other jurisdictions, and indeed get ahead of them, are, in our view, entirely absent from Bill 90 as it is currently drafted. I would like to take a moment and go through what I believe those elements are and demonstrate to the best of my ability how Bill 90 does not address them, and then Ms Miller will make a few suggestions for specific amendments to the legislation that might be of service to you as you attempt to solve this very difficult problem.

To begin with, a sound solid-waste diversion strategy depends on five key principles:

- (1) We must respect the 3Rs hierarchy—reduction, reuse, recycling—in that order.
- (2) We must implement the best of what is known as extended producer responsibility.
- (3) We must tailor our waste diversion and recycling programs to suit the particular needs of different materials, rather than attempting to come up with a one-size-fits-all, shoehorn-style effort to deal with them.
- (4) We need to devise a system that to the minimum degree possible is bureaucratic and complex. We need something that is speedy and simple.

Finally, we believe there should be an appropriate division of responsibilities and authority between the public and the private sector.

To go through these, the 3Rs hierarchy we all know. Unfortunately, Bill 90 and its incentives incentive exactly opposite to what we would look for in the 3Rs hierarchy. The only option that costs an industry nothing is to continue to have their materials go into landfill or incineration. That is the only no-cost option available. The second option, which is to go into a cost-shared program with municipalities for recycling, costs something on the order of 50% of the cost to the industry. If the industry wants to really get aggressive and redesign their products or perhaps even design a take-back system after, say, the Beer Store model, the industry has to pay 100% of that system. In other words, the incentives are opposite to what you would try to achieve if you were respecting the 3Rs hierarchy.

As to extended producer responsibility, this is an exciting and innovative way of dealing with waste that's emerged in Europe and is now actually present in eight of 10 provinces in Canada. Essentially, as the name says, the responsibility of the producer of a product or package is extended past the point of purchase so it becomes their cost to get that material out of the waste stream. The Beer Store is of course the perfect example of this. The lovely thing about this type of system is that the person making the decision about how a product is manufactured or packaged is the same person bearing the cost for that decision, and the market will send a price signal if their design is not recyclable, reusable etc.

This bill makes EPR programs, extended producer responsibility programs, unnecessarily complicated and costly by requiring an elaborate negotiation process with Waste Diversion Ontario, a series of fees and a schedule

of oversight by this body, which will, in our view, impede extended producer responsibility.

As to the point on tailoring the recycling and reuse programs to the specific material, sadly, Bill 90 directs new industries entering to a one-size-fits-all system, essentially saying, "You will follow the established procedures of this board of directors," the Waste Diversion Organization, who have an interest in promoting a particular style of recycling. We have tried before to have one-system-fits-all here in Ontario. It's called the garbage bag. If we simply transfer all materials over to the blue box, all we've done is, at some cost to the taxpayer, distributed a blue box to everyone and put everything back into it. We need to have more flexibility in the legislation so that different industries can take different approaches.

I think it's not without accident that the particular industries that are initially on the Waste Diversion Organization board are industries which benefit from the blue box. The soft drink industry benefits because they don't have to have a deposit system, the grocery stores benefit because they don't have to have product take-back, and the aluminum and plastics industries benefit because they're not giving up market share to refillable glass containers, which would not be in the blue box.

**1310**

As to the size and scale of the bureaucracy of the program, Bill 90 imposes a new layer of decision-making between the ministry and industries seeking to divert their waste. No longer can the ministry negotiate directly with an industry that might wish to do something progressive, but now they have to go through an elaborate procedure with those selfsame industries I named a moment ago.

Finally, what are the appropriate roles for government and industry? I've heard it said before that this relationship works best when government steers and industry rows, when government develops policy and the manufacturers do the things necessary to make their products and get them to consumers. This does it backwards. The industry representatives on the Waste Diversion Organization are the ones who develop policy with new industries that might want to enter a recycling agreement. The ministry has essentially handed over the policy function to the very same industries which have failed to fund the blue box for the last 14 years, or have funded it inadequately for large periods of that time. And the municipalities—the public sector—have to pay the majority of the cost to deliver the program. The system is backwards; the government is rowing and not steering.

With that, I'd like to turn it over to Ms Miller.

**Ms Katrina Miller:** I am going to go through our recommendations regarding these four principles that my colleague has laid out for you. To start with, we have four recommendations regarding the 3Rs hierarchy principle that we hope will improve this principle in the bill.

Our first recommendation is that we believe Bill 90 should include provincial funding for municipal organic

waste diversion. An act that promotes 3Rs must include diversion and composting of organics. Seeing that no industry can be held directly responsible for organics, we believe that the province and municipal governments should be sharing this responsibility.

Recommendation 2: Bill 90 should include industry funding for the municipal disposal of packaging and products. This will create a greater incentive for industry to follow the 3Rs hierarchy.

Recommendation 3: we believe that section 24(1) should be amended to read, "A waste diversion program developed under this act for a designated waste will focus on activities to reduce, reuse and recycle the designated waste in that order." Currently, the clause reads that the programs may only include the 3Rs activities, which we believe is inadequate.

Our fourth recommendation under this 3Rs hierarchy is that section 24(2) should be amended to read, "A waste diversion program developed under this act for designated waste shall not include:

- "1. The burning of the designated waste.
- "2. The landfilling of the designated waste.
- "3. The application of the designated waste to land."

The disposal methods described in this clause have no place in a bill promoting 3Rs.

Our second set of recommendations regards extended producer responsibility principles. First, municipalities have no assurance that they will receive any funding from industry for the blue box programs under the way the act currently details this issue. Therefore, we believe that section 24(5) should be amended to read, "A waste diversion program developed under this act for blue box waste should provide for payments to municipalities that total at least 50% of the net operating and capital costs of their blue box program."

Our second recommendation is that subsections 33(7) and 33(8) should be struck from section 33. This is because industry stewardship programs like The Beer Store's deposit-return system should be exempt from all fees, thereby giving them an incentive to move up that 3Rs hierarchy and to take on more extended producer responsibility.

We only have one recommendation regarding material-specified programs. We believe that Bill 90 should contain a mechanism by which items defined as blue box waste can be moved to another collection system when it is deemed to be more efficient and more cost-effective at reaching the same or higher diversion targets. An example of this would be the deposit-return system. A study was done by General Science Works in 1998 which showed that a deposit-return system for wine and spirit containers would have a greater capture rate and be more cost-effective than blue box collection.

We have four recommendations for creating a more efficient administration within this act.

We believe subsections 4(a), 4(d) and 4(g) should be struck from section 4 of the bill. These are clauses that deal with responsibilities of Waste Diversion Ontario. Waste Diversion Ontario should be responsible for the administration of the bill and for the blue box funding.

However, the design of programs outside the blue box should be left to specific industry funding organizations, such as the battery organizations or the oil industry, which know best how to develop a program that will divert that material from the waste stream. We believe these programs should be monitored directly by the ministry, as they're an honest broker within this.

Our second recommendation is that subsection 3(2), which details the membership of the board of directors of the WDO, should be amended to include at least one environmental non-government representative who is designated by the Ontario Environment Network. Such a representative will aid in the WDO's ability to act as an honest broker.

Likewise, we believe subsection 3(3) should be amended to include two ENGO representatives as observers of the WDO to promote better public transparency and accountability.

Our fourth recommendation is that section 4(e), giving the WDO power to develop a dispute resolution process, should be struck from section 4 of the bill. An impartial party, not affected parties, should be developing this process.

Our recommendations regarding the appropriate roles of government and business—we have only two of those:

First, we believe that section 3(2) should be amended to increase municipal representation on the board of directors of the WDO to at least six voting members, and the chair for the first year of the board's operation should be a municipal representative. Municipalities, which have the majority of the burden for waste that we're talking about in this bill, especially with respect to the blue box waste, should also have a larger part in forming the waste diversion policy that deals with these wastes.

Our second recommendation is that section 25(3) should be amended to read, "The minister shall decide in writing to approve the program, to approve and modify the program or to not approve the program." The minister must have the ability to modify programs before approval to better fit the policies of the government.

This ends our presentation. We would like to devote the rest of our time to answering any questions the members may have.

**The Chair:** That gives us about two and a half minutes per caucus. This time we're starting with the government members.

**Mr Arnott:** Thank you very much for your presentation. We appreciate your input and your advice. As you know, this bill was introduced in the Legislature in June and was referred to this committee after first reading. It's a rather interesting process, whereby we all have a chance to have input before the second reading debate takes place. So we're certainly at a stage where we're listening and we appreciate the suggestions you've offered.

I wanted to ask you one thing. In your recommendations, toward the end under the category "Recommendations Regarding Efficient Administration," you've asked for an opportunity to have a member designated by the Ontario Environment Network to sit as a member of

the board of directors of Waste Diversion Ontario, and also for two observers. Why would you need a member on the board and two observers?

**Mr Perks:** To answer that quite quickly, we've had a lot of experience over the years in working on these kinds of committees, and we've found that one typical problem is that environmental organizations are typically quite small and underresourced. When we participate in these, the person designated usually spends all of his or her time simply keeping on top of the various areas of business of the organization and doesn't have time to report back to the larger community of environmentalists. It's also a very diverse community, representing people from northern Ontario, from different walks of life and so on. We feel that giving someone the responsibility to do the business of the organization and others the responsibility to make sure the environmental community as a whole is aware of what's going on is, for our purposes, the best solution.

**Mr James J. Bradley (St Catharines):** Do you feel that the legislation as a whole encompasses enough of the players out there who are producing what we would consider to be waste in the first place? There was a concern of how large the umbrella is and the allocation of responsibility. What would your views be on that?

**Mr Perks:** Very simply, sir, in our view about 20% to 25% of the waste stream will be dealt with by this organization. That's it. Organic wastes are left out entirely. Industries whose products or packaging are non-reusable, non-recyclable and haven't been reduced are left out of the process entirely. Industries that may want to get into that game will have a difficult time getting in. Sadly, the bill is structured to favour the interests of a very small number of industries that are already in and create a shoehorn that everyone else has to try to fit. So I don't think it will actually represent very much progress for waste diversion in Ontario at all.

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**Mr Bradley:** How would you suggest—it could be a very simple answer, I guess—that we bring more of the other players into the game? I'm thinking particularly of their responsibilities for diversion and, second, money at the table. Some of the people who are there have complained that they have made some significant progress, that they have contributed over the years and they look out and see others who have not. Would it take another bill? Would it take amendment to this legislation? How could we accomplish bringing the other players in that you have described?

**Mr Perks:** I think, sir—you'll know this, having been minister yourself—that the Environmental Protection Act already gives the Minister of the Environment absolutely adequate powers to say to an industry, "You will divert this amount of waste and you will do it by this date." Then it would be a process where the ministry and the minister directly discuss how to do that with the battery industry, the oil industry, the paint industry. This is the way that most jurisdictions—British Columbia, Alberta and others—are doing it. There is no intermediate body of a few interested parties that create an additional layer

of bureaucracy. The negotiation is between the people's representative—the government of Ontario in the person of the Minister of the Environment—and the industry that we want to bring into programs.

**Mr Marchese:** Thank you both for coming. Ted is very nice. He always says, "Thank you for your presentation. We'll take it into consideration," which is nice. But have you heard from others with respect to some of your views? They're radically different from many of the presentations we've had. Have you heard from the minister or her staff or the ministry staff with respect to your proposals? Are they flexible? Are they not interested? Tell me briefly.

**Mr Perks:** We met briefly with the minister quite recently and it was her suggestion that we bring our recommendations here.

**Mr Marchese:** In other words, we make the decisions?

**Mr Perks:** Which is I think for now a fair process, given that it's before first reading and the members of this committee have the ability to substantially alter the purpose and intent of the act. I hope that's the approach they take. I know that a number of municipalities have approached us and said, "I know AMO is saying we like this, but we sure don't. We don't like the fact that we're not even getting 50% of the funding." A number of industry groups have come to us and said they don't like this. Environmentalists universally are opposed to the way this bill is designed.

**Mr Marchese:** Gord, we've been around.

**Mr Perks:** Yes.

**Mr Marchese:** So not much changes in the committee process. No radical changes take place here. The minister knows that; she's been around. Ministers understand how the process works. Everything takes place there. They bring it here; some changes get made. The parliamentary assistant goes back and says, "We've heard all this stuff." Then they make one or two changes to make it appear like they listened. That's basically how it works, right?

**Mr Perks:** Rosario, just in answer to that, I hope that Her Majesty's loyal opposition is effective in dealing with this and that the government side shows true wisdom and takes our advice into account.

**Mr Marchese:** I've got another question for you, Gord.

**The Chair:** Unfortunately—

**Mr Marchese:** Two and a half minutes?

**The Chair:** That's right. We started at 1:06 and we're ending at 1:26. There you go. I know you're at a disadvantage, Mr Marchese, given that the clock is behind you, not in front of you.

Thank you very much, both of you, for coming forward and speaking to us today.

#### COMPOSTING COUNCIL OF CANADA

**The Chair:** Our next presentation is from the Composting Council of Canada.

Thank you very much for coming forward.

**Ms Susan Antler:** Mr Gilchrist, thanks for accommodating us. The Composting Council of Canada applauds the Waste Diversion Organization from a number of perspectives, but also respectfully requests that you take a different attitude, that it's not waste but resources that we're trying to recover.

Organics represent between 30% and 50% of the materials that are going to landfill, and it's very important for our collective future that we focus on organics and how we're going to best recover them. Composting is a very effective, viable solution, from a backyard to a large-scale composting process. The Composting Council of Canada respectfully requests that you recognize the importance of composting, the importance of resource recovery and your ability to provide synergy among many interministerial departments to allow us to develop the composting industry.

We have been very fortunate to have a very effective and viable working relationship with the Ontario Ministry of the Environment as well as all other provincial ministries of the environment and Environment Canada. We also acknowledge the history and the devotion to organics that we've had to date from the staff. But there is a limited political will to recognize the importance of organics, and that's really where your focus should be.

Because 30% to 50% of the materials that are in landfill are organics—I can't stress that enough. It's very nice to go ahead and fight about deposits and all those wonderful things, but if you don't focus on organics, you will not achieve effective diversion.

Similarly, it's very important to recognize that this, not a diversion game but a resource recovery. This is an opportunity to build a new industry in Ontario, an industry that 10 years ago did not exist. Five years ago we started to use the word "industry," and in the future it will become a very viable part of the Ontario fabric.

We recognize that the legislative priority of this bill is to address the funding issues pertaining to the management of the blue box program, and we respect that. However, we request equal priority for the management and recovery of organic material. Again, if you don't focus on organics, you're not going to achieve your goals.

It's very critical that we move beyond just a waste diversion game, that you focus on the fact that these are valuable resources, that through composting can be produced a number of wonderful products. You have a foot in both piles in the compost bin, so to speak. You have a focus on the opportunities to divert organics to address your diversion needs, but you also have an eye on producing a viable industry in terms of product manufacturing and marketing.

We see that the board you have proposed for Waste Diversion Ontario is significantly underrepresentative of organics champions as well as of the observer groups. Specifically, there are basically only four municipal representations on the board. A very limited number of industry reps have a devotion and an active role in organics recovery so far.

We request observer status as the Composting Council of Canada on your board. We feel that we can provide excellent knowledge, networks and the vision to go ahead and build this industry. We have been in the Waste Diversion Organization as a committee member on organics in the last year, and I can tell you that without our participation, the committee would not have focused on marketing and value-added manufacturing. We have networks in terms of agriculture, natural resources; we have the researchers; we have experience from coast to coast and international networks that we can bring to the party to help build a viable industry.

It's also very important to recognize that the composting industry is comprised of both public and private facilities and operators. So the work of WDO reflects the need to provide a level playing field among all types of operators.

Just to give you a small background—and I'd love you all to know more about the composting industry—you should know that composting embraces all types of forms: backyard, and I'm sure you're all composting in your backyards, but also centralized. When we first did our survey on composting in 1992, there were only 100 facilities in Canada, diverting less than 300,000 tonnes. In our last survey in 1998, that number increased to 350 facilities diverting over 1.65 million tonnes of organics. That represents only 20% of the potential. The potential has only been focused on municipal waste. There are huge opportunities in terms of the agricultural sector, natural resources and other opportunities for the industry.

You must realize that when we look at WDO we cannot only focus on municipal waste. We have to focus on agricultural waste, manure. We have to focus on biosolids. You have to make sure that the powers of the WDO allow for synergy among the different waste sectors that can help build the composting industry.

Also very important is that the market has not even been tapped a tenth of the potential in terms of how to market this product.

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We have huge opportunities in terms of building an industry in the agricultural community: silviculture, which is the growing of trees; landscaping; soil remediation; bioremediation; sod production; mine reclamation. All of these are ministries that you have control of as the Ontario government and it's very important that you allow us to work together among your ministries to build this industry.

In terms of the factors for success in terms of the building of this industry in Ontario, we believe there are at least five. First of all, your political will to recognize that organics need to be recovered; that you take on a perspective that the WDO must adopt product manufacturing and marketing, not just waste diversion; that we focus on intensive training of the operators so that we have your trust on an ongoing basis; that we have effective standards—and right now we do not have them in Ontario—to build this industry; and that we develop synergy among different interest groups.

Our key immediate needs as you move forward beyond the passing of this bill and getting us observer status at the WDO are to adopt the CCME guidelines for compost quality. Currently Ontario is operating in outdated standards and not allowing for extra materials to be recovered through composting. You are behind most of the other provinces across Canada in terms of standards.

You must also help us support the development of synergistic partnerships among Ontario ministries. This is not an environment issue in terms of developing a composting industry. It's important to get a number of people around the table, specifically OMAFRA, Municipal Affairs and Housing, Transportation, Economic Development and Trade and Northern Development and Mines. They all have a role to help us build this industry and we just need to be able to get them around the table.

We are also asking for you to help us support industry development. We are not looking for handouts; we are looking for long-term support in terms of your resources, your connections, to help us build awareness, to help us develop research and to help guide us through the intricacies of interprovincial and federal relations.

In conclusion, we support WDO. We recognize that right now your immediate need is funding for blue box. You must put equal emphasis on organics recovery to achieve a long-term, viable solution for Ontario. Thank you.

**The Chair:** That leaves us with just over three minutes per caucus and this time we will start with the official opposition.

**Mr Bradley:** My first question would relate to two large municipalities, which have been highly successful in diverting waste, much more so than we have seen here in Ontario. Those two municipalities are Edmonton, Alberta, and Halifax, Nova Scotia. Could you share with the committee and whoever else is listening to us today why they are successful? What are they doing that we're not doing in a place such as Toronto, for instance, that makes them much more successful, particularly in the field in which you have a particular interest?

**Ms Antler:** First of all, Mr Bradley, they recognized that organics were the ticket for effective diversion goals. When you look at the pie overall and do not focus on the little pieces, you look at a big piece of the pie, 30% to 50% of which is organics. So they developed a capture program to get those organics. They then also established a very effective private-public partnership that met their economic needs to be a viable solution. So in Edmonton they developed a relationship with TransAlta and in Halifax they developed a relationship with two private composting facilities that were able to be viable in the conditions they had. They did very effective awareness with their constituents. They had the political will to stand behavioural change issues, because that is an issue upfront.

Where they stand in terms of the development of the industry now is that they're focusing on market development in terms of what they are going to do with

the product. Like any good manufacturing operation, you have to know what you're going to do with the end product before you start pushing that first button. So in terms of the overall development of the industry, we really have to take a target in terms of knowing what we want to do at the end. In terms of the development of those two cities and the three plants in those cities, they're really focused on market development now.

**Mr Bradley:** The one area where we've had less success than we'd like to see, obviously, is the area of apartments, especially large apartment buildings in a municipality such as Metropolitan Toronto. How can they become part of the composting effort? The argument that's always put forward by Toronto when you suggest they should do as Edmonton or Halifax are doing is how different Toronto is.

**Ms Antler:** Yes, we've heard those stories. One of the issues is that the sharing of information between the various municipalities can happen through the Composting council networks. The biggest impediment, quite honestly, is that there are different types of composting technologies that will address different types of municipalities.

The biggest issue right now is that Toronto would fail. Mixed waste is a viable program for composting provided you have the right type of end market already addressed. The issue is that Toronto cannot go forward with mixed waste composting because the CCME guidelines have not been passed in Ontario. So it would fail in terms of producing a product. One of the impediments to the development of the industry in Ontario is the fact that we are operating on 1991 guidelines. Ontario was at the table in 1995, along with all the other provinces, in terms of adopting the CCME guidelines for compost quality, yet Ontario has yet to adopt them in their own legislation.

**Mr Marchese:** Thank you for your presentation. The Toronto Environmental Alliance mentioned composting as one issue as well, and you, and AMO has been here this morning. The Association of Municipalities of Ontario talked about this when they said, "The final WDO report recommended to the Minister of the Environment that the province provide funding to municipalities for their organic waste diversion programs. However, there does not appear to be a mechanism in Bill 90 to support organic waste diversion." There isn't, obviously. I'm not quite sure; have you had discussions with them with respect to this, and what have they told you?

**Ms Antler:** We have not had discussions with either TEA or AMO.

**Mr Marchese:** Not with them, sorry, with the government, with the minister, with the parliamentary assistant, Mr Arnott, or anybody.

**Ms Antler:** One of the challenges, Mr Marchese, is how you define who is a steward of organics. At least in yard materials, who owns the tree that is in your backyard? Organics are a much different type of product than a pop can or a beer bottle in terms of where you can identify who is the product steward.

There are some industries that brand organics. Go into a grocery store or go into the fresh produce section and most of them have labels on their products. The opportunity is for us to have more effective discussions among industries that produce organic materials, with municipalities, because it's going to be a different stewardship model than a typical point to a specific industry.

**Mr Marchese:** I understand that. I'm supportive of composting, is what I'm saying to you. I'm not sure the government is moving in that direction, obviously, so I was asking whether you heard anything different. That was the point.

AMO said, "Organic waste represents 30% to 40% of the municipal solid waste stream," as you said. "It is therefore essential to increase the level of organic waste diversion in Ontario if we are to achieve the overall 50% provincial waste diversion target." We support that, is the point we make. A few people are composting; the majority are not, because it's too inconvenient. So unless governments take leadership roles to make that happen, through education mostly and through funding mechanisms, I'm not sure it's going to happen.

**Ms Antler:** Other jurisdictions have made it happen. It gets into political will, getting the right system for the right place and getting all the players involved.

**Mr Marchese:** I agree. You heard the Toronto Environmental Alliance with respect to the 3Rs and the hierarchy. Do you have an opinion on that and the extended provincial responsibility points they raised? What is your view of that?

**Ms Antler:** I think in terms of organics, we're all responsible. Who produces the trees? Who produces the fruits and vegetables? So we have a different stewardship model than you would find in a regular type of product that you would find in a superstore.

What I would implore the committee to recognize is that this is not just a waste diversion opportunity for this committee; it's creating a whole new industry called composting, recognizing that we need to embrace not only the diversion but the product utilization. I think the key player who can help get us all around the table is the provincial government, because you have arms in different sectors that a waste diversion focus does not.

1340

**Mr Arnott:** Of course the government supports composting. You indicated that you have about 70 large-scale composting facilities in Ontario, a substantial number. I believe one of those is in my constituency, All Treat Farms, near the village of Arthur. Through them I'm quite familiar with what you do and the positive impact that you have.

I just want to compliment you on your presentation, because I think your enthusiasm is very exciting and we appreciate the advice that you've given. I think you do have a lot to offer the government in terms of the advice that you will put forward in the future. Your request for observer status is well noted, and your interest is appreciated. Thank you.

**Ms Antler:** Thank you very much.

**The Chair:** Any other questions?

**Mr Miller:** We must both have good ridings, Ted, because we have one of those 70 composting plants in my riding, located in Bracebridge, Ontario, in Muskoka.

**Ms Antler:** COMPOSTIT.

**Mr Miller:** That's correct. So I guess part of my question is, what's made these progressive ridings have these composting plants? Do you have any insight into that in the 70 locations that they are located in?

**Ms Antler:** Well, first of all, if you would allow me a little bit of humour, I would say they're all members of the Composting Council of Canada. But also I think, quite honestly, the development of the industry has been based on crisis. It's hard to change attitudes and behaviours, and you need sometimes a little bit of incentive. So in terms of Mr Arnott's facility, it's private sector. Linda and George White of All Treat Farms are focused on product marketing. They're capturing the diversion, but they're also recognizing that they are going to get revenue in terms of selling their product. So they've really taken a different approach than a municipal orientation, which has really been diversion.

In terms of yours, COMPOSTIT, it's very similar in terms of that being a private sector facility. It spent a lot of time in terms of municipal orientation, but it also is looking at product manufacturing and marketing. I think in terms of what's going to move our industry really far ahead, it's to capture the benefits from a diversion, but also really market the heck out of this product and making sure that we have viable features, benefits, and a whole array of product lines that will allow us to address different types of segments.

**The Chair:** Thank you very much for coming before us and bringing the perspective of the composting industry.

**Ms Antler:** Thank you.

## INFORMATION TECHNOLOGY ASSOCIATION OF CANADA

### ITAC ONTARIO

**The Chair:** Our next presentation will be from the Information Technology Association of Canada. Good afternoon and welcome to the committee.

**Mr Robert Horwood:** Thank you. Good afternoon, ladies and gentlemen. I'm Bob Horwood, and my colleague is Laura Lukasik. We represent ITAC Ontario, which is the Ontario Information Technology Association, and ITAC, which is the Information Technology Association of Canada.

ITAC is Canada's leading national trade association, which represents through its membership some 70% of the information technology sector business in Canada and in Ontario. Our members include a cross-section of Ontario's leading manufacturers and producers of IT products and services, including such items as telephones, computers, printers, software, copiers and the like.

I think it is important to begin by stating that our industry is deeply concerned with the issues related to

end of life of equipment. Many of the companies we represent are already in the forefront of waste diversion. Most of the larger companies have staff dedicated to environmental issues, and many of our members already have recycling programs in place for their products.

There are five points that I'd like to bring to your attention this afternoon with regard to Bill 90:

- (1) The question of the risk of fragmentation of legislation in all the jurisdictions across the country.
- (2) The process of designation of products.
- (3) Alternatives to WDO-managed programs.
- (4) Concerns about the industry funding organizations and the manner in which they will operate.
- (5) The fees which are levied to cover WDO costs.

I'd like to begin with the question of fragmented legislation in the various jurisdictions across the country. In addition to Ontario, other provinces are bringing forward legislation governing waste diversion. We at ITAC are very concerned with the implications on our industry of differing regulations in each province.

We would ask the government of Ontario not to implement waste diversion measures for our industry until this issue of varying jurisdictions has been adequately addressed. We would be pleased to work with all stakeholders to develop an appropriate solution. In fact, ITAC is developing a national environmental road map for our industry that we plan to complete later this fall and that will address many of these issues.

In addition to our concern with differing regulations in each province, our intent today is to bring forward a few key points related to Bill 90 directly.

First of all, turning to the process of the designation of products, as you are aware, for a product to be subject to the provisions of Bill 90 it must be designated by the minister. Following designation, the bill requires WDO to consult with the affected industry. While we welcome the requirement for industry consultation, we believe it is important for consultation to take place prior to designation to ensure the minister is aware of our industry issues and the impact of designating a product. Accordingly, we would ask that the minister, in the legislation, provide for 12 months' notice to the industry of the intent to designate a product or packaging of a product under the terms of the bill.

With regard to alternatives to WDO-managed programs, we are also very pleased that the bill provides for the approval of alternatives to a WDO-managed waste diversion program. Most companies in our sector either have already invested in waste diversion programs or are planning to do so in the near future. We believe these activities must be given full and careful consideration as alternative plans in the context of Bill 90. While the current wording of the bill allows for alternative plans to be considered, we believe the bill could be strengthened by stating that alternative industry plans for designated waste are the preferred solution. The bill should require the WDO to work with the affected industry, both to review existing and planned programs and to create new programs.

Regarding our concerns about the IFOs, or industry funding organizations, the bill provides for requirements to create an industry funding organization, or IFO, to govern the implementation and operation of a waste diversion program. This IFO can either be established by the WDO following designation of the substance by the minister, or the minister can require the program to be developed with an existing IFO. We believe very strongly that the best solutions to the management of waste from our industry sector will be solutions managed by the industry itself. We are asking that Bill 90 reflect this preference by requiring WDO, prior to establishing an IFO, to convince the minister that efforts to work with or to create an industry-based IFO have been unsuccessful.

That brings me to our final point, which is the fees that may be levied to cover WDO costs. The bill allows for the IFO to levy fees on the affected industry to pay for the waste diversion program, to pay a share of the WDO costs, and even to pay Ministry of the Environment costs. It appears there are no guidelines on how these fees are to be determined. We are particularly concerned with the process for collection of waste diversion fees from companies selling products directly to consumers in Canada from outside of the country. The bill also does not address how the recycling authorities would be motivated to manage their costs effectively. While we do not have a specific recommendation at this time to address these issues, we believe this needs to be addressed prior to the designation of any products in our sector.

Those are our points. I would like to thank you for your consideration this morning. I believe that copies of the presentation I've just delivered to you have been circulated. I'm certainly prepared to answer any questions you may have.

1350

**The Vice-Chair (Mr Norm Miller):** Thank you very much, Mr Horwood. We have five minutes per party. Mr Marchese, if you would like to go first.

**Mr Marchese:** Thank you very much. I think you were here for the presentation made by the Toronto Environmental Alliance.

**Mr Horwood:** I wasn't, but—

**Ms Laura Lukasik:** Just the tail end.

**Mr Marchese:** They say under "Extended Producer Responsibility" the following: Extended producer responsibility "is a waste reduction strategy which seeks to tie incentives more directly to sound waste diversion goals." Extended producer responsibility "achieves this by extending the producer's responsibility for their product or package past the point of purchase. In other words, the producer has to bear the financial and/or physical burden of the ultimate environmental fate of the product. Thus producers receive a price signal for wasteful products and packaging design."

It seems reasonable to me. What do you think of that?

**Mr Horwood:** One of the concerns we would have about that of course, particularly in the distribution of

information technology products, and if we think in terms of personal computers at the beginning, is that the manner in which this is handled in Ontario is only one part of the problem. Typically, a producer of personal computers may be importing product and packaging that surrounds the product from outside of the country, and the products may be distributed across all provinces of the country. Therefore it becomes difficult to figure out how to pinpoint exactly what costs should be attributed to which point in the distribution cycle.

**Mr Marchese:** In that instance, could we not find a mechanism to deal with that, if that were the only concern?

**Mr Horwood:** Obviously. There are solutions to every problem. The difficulty is that the way we see the legislation as it is structured at the moment, there is some weakness in that point.

**Mr Marchese:** You support the bill, obviously, generally speaking?

**Mr Horwood:** Yes, of course.

**Mr Marchese:** Again, the Toronto Environmental Alliance spoke about other things, including the 3Rs as a hierarchy. "Reduction is the best strategy, reuse is second best, followed by recycling," which is the only thing we're dealing with. I'm not quite sure why we as a government here in Ontario are not taking advantage of trying to do more than just dealing with recyclable matter, but since we're at it, why not deal with everything else that includes reduction, reusing, composting? Any advice to the government with respect to those issues?

**Mr Horwood:** In terms of reduction with regard to information technology products, the reduction opportunities I think are restricted primarily to packaging. I think everybody in the industry is trying to work out ways to reduce the packaging. Packaging not only poses problems in terms of waste but obviously is a cost which has to be passed on somewhere along the line. So if we could reduce the packaging, that would be great.

There are other aspects of recycling, though, in terms of the 3Rs, which I heard you mention there. There are component parts to most of the information technology equipment which is currently in use that can be recycled. I alluded to the fact that most of the companies in our industry are in fact working very hard to put in place programs which recycle the component parts of equipment. They will have redistribution points, if you like, where used equipment or obsolete equipment can be returned so the various component parts can be salvaged from those.

**Mr Arnott:** I just want to thank you for your support of our bill and for your presentation today. You mentioned a concern about the fact that we have 10 provinces and the communities are coming forward with an effort similar to ours. I know you recognize that we have the jurisdiction to move ahead in this area.

**Mr Horwood:** Absolutely.

**Mr Arnott:** Ideally we would like to think that we're leaders in the country and that other provinces would

follow the model we've established. I would hope that's the case, although I haven't had a chance to be briefed on what all the provinces are doing. Is there a chance that that might eventually happen?

**Mr Horwood:** Our concern is very definitely, and I personally see it as one of the Canadian difficulties, if you like, that we have a number of jurisdictions, all with different responsibilities. For the economic well-being of the country as a whole, we have to make sure that we're not imposing impediments on doing business across the country. So I think that indeed if Ontario can provide enlightened legislation which acts as a natural leader in the process, this would be good. But if we find ourselves in the situation where the different jurisdictions are imposing different requirements which in fact can't be met, the result will be that various of the companies will decide not to do business in those jurisdictions that they find themselves in trouble in, or in difficulty with—"trouble" is the wrong word. In the Canadian context, and I think this is one of the burdens of leadership, the leaders have to take into account the requirements of the followers.

**The Vice-Chair:** Anyone else?

**Mr Bradley:** I note a theme that continues to emerge from your presentation, which is that you seem to want as little government direction and participation as possible. You would prefer a model which allows your industry to develop its own programs and to implement its own programs, and I don't know whether you would even be involved in the monitoring. Is this really practical when we haven't seen substantial progress to this point in time? Isn't this why governments in various jurisdictions have decided to intervene with legislation, because the industries of their own volition have not made remarkable progress in meeting the 3Rs?

**Mr Horwood:** There may well be reasons why these things have been overlooked, not just by industries or governments but by the population at large. A hundred years ago we didn't think that a lot of the things which are concerns today were concerns, because there weren't the volumes and the situation didn't arise. I think you have to believe, as I certainly do, that our industry and most industries are responsible. They are not only trying to deliver valuable products and products which lend to the economic well-being of the country, but they are also good citizens and they are trying to make sure that the society we live in is healthy and satisfying.

One of the concerns we have, and I think this has been a situation demonstrated in the past, is that often free market situations are more effective than legislation and regulation. There may need to be some regulation and some monitoring, but our industry, like most industries, is probably most knowledgeable about the things that can be done to improve the situation. What we're saying is, before you stick us in a straitjacket, encourage us and help us deal with the problems that we know best.

**Mr Bradley:** You mentioned the concern you would have about the fragmentation of laws or almost contradicting laws in some places in jurisdictions across the

country. The only body outside of Environment Canada that deals with trying to coordinate efforts among the provinces is the Canadian Council of Ministers of the Environment. My observation is that that is not a raving success, to say the least. What often happens when you try to coordinate across the country is you end up moving toward the lowest common denominator instead of the highest common denominator.

How do you propose that we have agreement that is going to be meaningful in terms of the legislation or regulation we see implemented and not simply a dilution to—I'll just pull one out of a hat; I'm not being negative about it—what Alberta wants?

1400

**Mr Horwood:** This is what I'd describe as the Canadian dilemma: how do we in fact coordinate, not just in waste matters and environmental matters, but how do we coordinate across the country on health matters, on educational matters? This is just another instance, but what I am certain of is that if we impose barriers that restrict the economic well-being of the country, we are all going to suffer. So there has to be compromise between the various provinces and federal jurisdictions as well. That's the nature of our "Canadian way," at least as I see it.

**The Vice-Chair:** Time is up. Thank you very much, Mr Horwood and Ms Lukasik, for coming before us today.

**Mr Horwood:** Thank you for giving us the opportunity to present our views.

#### RECYCLING COUNCIL OF ONTARIO

**The Vice-Chair:** The next group coming before the committee is the Recycling Council of Ontario: John Hanson and Michael Peterson. Welcome.

**Mr John Hanson:** Thank you very much for the opportunity to address the committee this afternoon. My name is John Hanson. A minor correction to the agenda: I'm actually here today in my capacity as senior policy adviser to the Recycling Council of Ontario as opposed to my paid role as a consultant on RCO projects.

Very quickly, a little bit about the Recycling Council of Ontario. We have an interesting vantage point on this issue, having been involved for really 15 years in trying to work toward more equitable cost sharing and sharing of operational responsibilities for waste minimization in the province. We have a very broad-based membership that consists of municipal governments, recycling industries, manufacturers, environmental organizations, academics and the general public. So since our inception in 1978, we have been very actively assisting these different sectors of society to reduce waste and we've been central to the development of both recycling programs and recycling policies.

I should say that some significant work that we did in 1997 and 1998 has been attributed with the formation of the Waste Diversion Organization. This was called the recycling roles and responsibilities process, which looked

at about 13 different options that the province had for addressing this problem of viability of blue box curbside recycling, and as a result of that work we participated on the WDO and contributed to the recommendations that have led ultimately to the development of this legislation.

So our general position is that we support the intent of the legislation and we hope that it will ensure financial sustainability for municipal recycling programs and that it will ensure an equitable contribution from the companies that sell products and packages that are collected through municipal recycling programs, and we hope it will increase the amount of waste that's diverted from disposal in the province. However, we do have some serious concerns that Bill 90, as it is currently written, will not go far enough in achieving these goals and in some cases may even be contrary to the achievement of those goals. Because we are a multi-stakeholder group with many divergent interests, it does take longer for us to go through some of these issues, so we will be submitting a more detailed brief prior to September 21.

I'd like to defer to my colleague Michael Peterson, who is the vice-chairman of the recycling council, to address some of the things that we perceive as legal issues associated with the bill, particularly the lack of context and the perpetuating of a waste focus.

**Mr Michael Peterson:** As John has mentioned, I'm the vice-chair of the RCO. I'm also a practising lawyer in the field of environmental law, so I'm going to bore you with some legal details.

The first point I want to make is that the legislation, in our view, suffers from a lack of context. It creates a mechanism for funding recycling from industry participants. It seems to us clear that if there are industry participants who don't like the funding, they're going to push back. The most obvious way they would push back would be to challenge the legislation, in our view, on the grounds that it's an indirect tax that's beyond the jurisdiction of the province. The ministry would probably respond that it's not a tax, it's a funding mechanism, it's aimed at a specific problem, it's funding to go to that specific problem and cases have held that that is not a tax; it's more in the nature of a levy and it's legitimate within the provincial jurisdiction. I think both sides have some merit.

In our view, a preamble to the legislation or something else to give it context to make it clear that it's intended to address deficiencies in waste funding, recycling deficiencies, problems with municipal recycling, something of that nature would be helpful and would go some way, in our view, to supporting the legislation and making sure that it's not going to be successfully challenged.

The second point I want to address is what we call the waste focus. It's been our position for some time that recycling is not the same thing as waste management, and yet the legislation is perpetuating the notion that it's all waste. For example, aluminum cans these days are worth on the marketplace about \$1,700 a tonne, for used aluminum cans. In our view, that is not a waste, that is

not garbage, and yet it's all being characterized in the legislation as "waste."

It creates two problems. First of all, there's the perception problem. If it's waste, it's not very valuable and we can dismiss it. Secondly, if it's waste, all the provisions of part V of the Environmental Protection Act come into play. You have to have certificates of approval to deal with the waste management system. If you're going to deal with the recycling in a plant somewhere, that becomes a waste disposal site. You then have to notify all your neighbours that you're creating a waste disposal site. Your neighbours immediately think you're putting up a landfill and you get opposition. It may be something no more hazardous than grinding up some plastic bottles or dealing with newspaper, but it's considered a waste disposal site and a notice has to go to all the neighbours.

In our view, this is a negative that doesn't have to exist. We would like to see a definition of "recyclable materials." There has in the past been one that was abandoned. We would like to see the regulations amended so that there's a definition of "recyclable materials," that what we're talking about here becomes recyclables and not waste. Don't saddle the recycling industry with all the baggage that goes with waste. We understand what the ministry is concerned about. They're concerned about people taking recyclables that are of little merit and putting them in a field somewhere and abandoning them; in other words, it's sort of cheap waste disposal and you get out from all the regulation. We appreciate there are marginal materials; there are marginal players. There's a lot of stuff that's not marginal, and it's a problem if you call it waste.

John, back to you.

**Mr Hanson:** In conclusion on the subject of waste definition, we are recommending that the definition of "recyclable materials" be included in the definitions section of section 1 of regulation 347 and that regulation 347 should further provide that recyclable materials do not constitute a waste for the purposes of regulation 347 or of part V of the Environmental Protection Act. These new definitions could provide the basis of current and future designations under Bill 90.

We're also concerned about problems in the designation of materials that are required to pay fees, and I'm sure the committee has heard this already. There exist two basic problems, as we see it. First, those who are doing the environmentally correct or desirable thing—recycling—have to pay the fees, where those whose products and packaging continue to be disposed of do not. This will not motivate people to do the environmentally correct thing and will not motivate actions that bring the greatest increase in diversion rates. Secondly, it may not financially support some of the innovative programs such as Ottawa's Take it Back program, where we have retailers taking things that may not be designated waste.

We're concerned about access to information. We're not confident that Bill 90 will ensure adequate public

access to the information and deliberations of WDO. More detailed requirements are needed to ensure that public access, while at the same time preserving the proprietary market information of the companies involved.

Michael, would you like to comment on the definition of "stewards"?

1410

**Mr Peterson:** Yes. I also just want to add something on the access to information. It's our view that a lot of this process and the WDO process and the WDO development should be public and should be made accessible to the public. But at the same time, we fully appreciate there's going to be a lot of sensitive commercial information that they are going to have access to, and it's clear that some of this has to be exempted from freedom of information. Otherwise, people are not going to be able to deal with it, they won't be able to get intelligent statistics on market shares and on things like that that may be necessary to do funding. So there has to be a clear delineation; in principle, WDO information public, but a clear carve-out for confidential market information which is going to be relevant.

The next point I want to address is the designation of steward and the term "steward" in the legislation. The legislation contemplates that waste diversion programs are implemented by Waste Diversion Ontario and the relevant industry funding organization or IFO. The IFO has power under the legislation to designate people as what are called stewards and, secondly, it has power to levy fees on the stewards. If there is going to be push back, this is where it's going to happen, when people start levying fees on these designated stewards. "Steward" is not a concept that's particularly well known in Ontario law. I'm not familiar with any statute where the term is used. In our view, this is an area where the legislation may be vulnerable. It would seem to us that some better definition of "steward" than just somebody having a "commercial connection" with the product has to be added to the legislation or, again, it may be vulnerable to a challenge.

**Mr Hanson:** I might add in that regard that a number of other provinces that have similar types of legislation refer to a first seller of a product as the regulated party.

We're also concerned about the cost-sharing formula. During the deliberations of Waste Diversion Ontario, both municipal and industry representatives came to an agreement that costs for the blue box program would be shared equally 50-50, whereas the legislation as it's currently written refers to municipal-industry funding as being not more than 50% of total net operating costs. We would like to see the equal sharing clearly enunciated in the regulation.

We're concerned about the fact that there's really no definition of "net recycling costs," whether that includes replacement costs for bins and trucks and equipment, that sort of thing. So there needs to be more definition provided.

Finally, I'd like to close with a comment about the makeup of the board itself. Subsection 3(2) of the bill

stipulates the initial membership of the WDO board of directors. Despite having been central to the policy development and recycling program implementation in Ontario for over 20 years and having laid the groundwork for the development of this legislation through our roles and responsibilities report and having served on the WDO during the development of its recommendations, RCO was not specifically named as a member of the board. We would recommend that subsection (10) be added to appoint a voting representative of RCO to the board. This would be an additional seat to those listed.

That concludes our brief today, but we will be providing more detailed comments in the future.

**The Vice-Chair:** Thank you very much. For questions, the government side.

**Mr Arnott:** Thank you very much for your presentation. You've highlighted a number of legal drafting issues that I'm sure the Ministry of the Environment's legal staff, as well as legislative counsel, will want to review. We appreciate the free advice you've offered.

On page 2 of your presentation you talk about the fact that this bill perpetuates a waste focus and you say that the definition of the word "waste"—

*Interruption.*

**Mr Arnott:** We're perpetuating a myth, I guess you're saying. I think most people understand that when they put cans and newspaper into their blue box, it's going somewhere other than a landfill, that it's not waste, it's a resource. I believe most people understand that implicitly.

**Mr Peterson:** I agree that most people understand that. Unfortunately, the Ministry of the Environment takes the position that it's all waste and you need to fit into our waste template to deal with it. So a specific problem: if you want to put a recycling plant somewhere, you have to call it a waste management site. You send a notice around to your neighbours and they think, "My God, they're putting up a landfill beside me." But the ministry requires you—it's called a waste disposal site and you have to do that. So I'm saying, if you didn't fit into part V of the Environmental Protection Act you wouldn't have to call it waste and you would be able to call it a recycling plant.

**Mr Bradley:** My first question goes into that. I recognize what your concern is, but there are metal recyclers out there who are not very welcome in many neighbourhoods. You had the Plastimet fire in Hamilton, which was a recycling operation, as I understand it.

How do you get around those concerns? I recognize why you don't want to be designated as a waste management site. Nevertheless, many of us have within our own constituencies or have had to deal with less than desirable recyclers, and I think of metal recycling particularly in this case and of situations that arise on sites where you end up with a situation such as Plastimet. How do you get around that? Can you have a number of different designations, as opposed to saying everything is either a recycling site or a waste management site?

**Mr Peterson:** As far as the Plastimet site, clearly that was something that the fire code could have dealt with. In fact, all of the legislation or the regulations that were changed subsequently didn't have to do with recycling, it had to do with the fire code. So there were certainly some omissions in the regulatory scheme and they've been rectified, but they were fire regulations.

**Mr Bradley:** And the scrap yards?

**Mr Peterson:** I suppose the question is, if it's heavy industry then your zoning legislation should take care of it. As I understand it, a lot of the stuff that the MOE is concerned about is people in effect taking garbage, avoiding the regulations on garbage, and then just dumping it places. But, as I say, the aluminum recycling may not be the prettiest thing around, but nobody's going to leave it in a field at \$1,700 a tonne. You don't have to be concerned about that. Whether it's something that's midway between virgin products and waste, if the recycling regulations address that, fine. But it's just going too far in the other direction to call it all waste.

**Mr Marchese:** My sense is to agree with you on the definition, because I think waste implies something. It designates, it defines and it creates an impression of something that is disposed of rather than reused. You're absolutely right, and even though Ted might think most people think it's reusable, it's not waste, he's wrong. So they should work on the definition of that particular issue, because I think you're on the right track.

AMO agrees with your presentation with respect to the sharing of the cost 50-50 and changing the language to reflect that. I hope Ted passes it back to the minister directly, that that's what people want as a measure that doesn't go far enough. But at least it makes it clear that it's 50-50.

With respect to the issue that you've raised about problems in the designation of materials that pay fees, those who are doing the environmentally desirable activities—recycling—pay fees, but those whose products and packaging need to be disposed of do not pay the fee. You're not the first ones to have said it; many have said it here today. I hope that Ted takes that back to the minister and deals with that. There are a few other things that you've said.

Do you have opposition, by the way, with respect to organic waste, which represents about 30% to 50% of the municipal solid waste stream?

**Mr Hanson:** Yes, we have. I'd just add one last comment to your comment about—well, let me deal with the organics first.

There's no question that if we're going to achieve the kinds of diversion numbers that the province has set, we need very comprehensive organic programs, and we understand how difficult it is to be able to find a steward who's responsible for the grass that grows on our lawns and the leaves that fall from the trees and the food that we throw out from our meals and fridges and so on. I think, in dealing with that, we really need to make sure the municipalities have adequate funding. One of the mechanisms of doing that is to have garbage paid for on a

per-unit basis and that those funds should be going to support composting.

In Ontario, we have terrible problems with soil erosion due to current agricultural processes. Composting is one way of ameliorating those problems. We should be trying to turn the waste that we have into something to apply back agriculturally. We think it's just very important and very problematic from a funding point of view, and that the obvious funder would be the person directly generating that at the curbside.

**The Vice-Chair:** Thank you very much, Mr Hanson and Mr Peterson, for coming today and making your presentation to us. Much appreciated.

**Mr Peterson:** Thank you very much for hearing us.

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### WARREN BRUBACHER

**The Vice-Chair:** The next presenter is Mr Warren Brubacher. Welcome Mr Brubacher. You have 10 minutes for your time to be used as you like, either just to use the whole 10 minutes or for questions afterwards.

**Mr Warren Brubacher:** Thank you for allowing me the opportunity to speak here today. My name is Warren Brubacher and I am very concerned about the future of waste management in Ontario. The recent garbage debates in Toronto attest that major problems exist. Solutions are needed that require creativity, ingenuity and innovation.

There are three areas which I would like to speak on today. They are the bottle-return system, the proposed board makeup of Waste Diversion Ontario and the proposed cut-off of paying 50% of blue box costs.

Bill 90 is a signal to me that the Ontario government and industry are ready to move ahead and properly handle all waste in an environmentally friendly way. In the state of California, even the citizens now are benefiting from changes in attitude. Cash prizes are now offered to people who have moved the most recyclables from the waste stream. Recycling rates have increased so much that the program is now spreading to more cities.

The first act of Waste Diversion Ontario should be the elimination of regulation 27, which makes it illegal to create a bottle-deposit-return system in this province. This piece of legislation has sent out a very negative image of Ontario's environmental position. It says that the power of corporations places people and the environment in second place to profits and convenience.

In 1993, the US Congressional Research Service reported bottle bills and curbside recycling work well together, providing the best solution. Deposit systems collect more of their targeted materials than do curbside programs. The curbside programs then can target a wider range of materials. These include fibre, electronics and food wastes. Under the 2010 Toronto task force, the city is now moving on its own to deal with the wet/dry waste situation. Regulation 27 has not helped the city to move out of the dark ages of waste management.

Now I will talk about my second point, which is the makeup of the proposed board. There needs to be a stronger voice from consumer-environmental organizations. In order for this board to function democratically, more than a business-government voice is required. A neutral party should nominate these representatives. The commission deciding the future of the Oak Ridges moraine, though stacked with developers, gravel pit owners and speculators, has five environmental representatives. The two public servants to be on the WDO board should be neutrally selected as well. This will reduce the opportunity for lobbying and deal-making. As it stands now, 10 members are government-corporation controlled. The four members of the municipalities will be overwhelmed.

This is not acceptable and I predict problems will surface in the future. Much has happened since regulation 27 was forced into law. The population of Ontario is now much more informed on environmental concerns and is demanding changes. By not doing a thorough job here, the Waste Diversion Organization may have a new chair in two to three years.

My last topic concerns section 24(5). Why must there be a limit of paying 50% of the blue box operating costs? This is unfair. It would make sense if a deposit-return system were in place. Since 1995 the province has downloaded many things to the municipal level and created nothing but turmoil and strife. By simply throwing more corporate cash into the blue box program, the trash problem will not be solved. This figure should be studied further. Here is where a stronger environmental consumer representation will help WDO function in a healthy way.

In summary, I would hope that industry and government are serious. We are running out of time and the next environmental disaster in Ontario could be just around the corner. We cannot afford to create a vehicle that serves as a foundation for creating loopholes in waste management. Stewardship programs dealing with computers, cars and building materials are being created around the world as I speak. Bill 90 should be a proclamation to everyone that Ontario is moving from the obsolete methods of waste management. Please think of your children's children and how this province will look 500 years from now when making your decisions.

**The Vice-Chair:** We have about a minute and a half each for questions.

**Mr Bradley:** The problem you draw to our attention of the composition of the board and the funding mechanisms, just to mention two, is extremely important. What would you propose would be a superior funding mechanism to implement as compared to the one the government has proposed in this legislation?

**Mr Brubacher:** Like I tried to say, I just think there needs to be a further balance in input. I think it's so corporate- and industry-stacked right now. Experts from people who are conservationists should be called in and consulted, and then there will be a much more rounded-out source of dealing with this problem. It's just too big,

it's too great, and everybody really needs to work together on this.

**Mr Marchese:** Thanks for coming today. What in your view is the obstacle toward getting this bottle deposit return? Why is it so hard to convince governments to do that, in your view?

**Mr Brubacher:** From the research I've done—and I've done a lot of this on my own because I think it's a very important problem—for instance, an example is the comparison of a peanut butter jar to a glass bottle. To me, people don't run around with peanut butter jars and throw them on the street. That is one example of why there has not been a bottle deposit plan put into place, and there are so many positive reasons for a bottle deposit.

For one instance, when you throw a glass bottle into a landfill site, it is like a little pocket of air in a landfill. The more bottles you put into a landfill site—you're taking up valuable landfill sites. And every time you make a bottle you have to use energy, heat, electricity and raw materials to create it, and you're dumping all this into a landfill site. These bottles can be used over and over again, hundreds and thousands of times, and it doesn't make any sense to just keep throwing them out.

I say, next week take a look—how much more time? I didn't think I was going to get going like this.

**The Chair:** Just to be fair, a very quick question from the government.

**Mr Arnott:** I just want to thank you for coming in. You're the first individual who has presented to this committee on Bill 90 and we appreciate that. There are a few others coming.

I noticed in one of the appendix pieces you've given us that you talk about the problem in northern Ontario in terms of recycling. I just wanted to let you know that at the AMO conference last week I met with a number of municipal councils from northern Ontario communities, and it was their position that we should move forward expeditiously with this bill because they saw this as an answer to assisting them to fund their recycling programs. So they are very supportive of this.

**Mr Brubacher:** I'm glad to hear that.

**The Chair:** Thank you very much, Mr Brubacher, for coming before us here today.

1430

## BREWERS OF ONTARIO

**The Chair:** Our next presentation will be from the Brewers of Ontario. Good afternoon and welcome to the committee. To begin, we have 20 minutes for your presentation.

**Mr Jeff Newton:** I believe the clerk is distributing copies of our presentation to all the members. By way of introduction, my name is Jeff Newton. I'm the executive director of the Brewers of Ontario.

**Mr Usman Valiante:** I'm Usman Valiante, director of strategic programs at Brewers of Ontario.

**Mr Newton:** We'd like to start our presentation by just briefly reviewing a bit about who we are at the

Brewers of Ontario. We are the trade association that represents the beer industry in Ontario, an industry today that is composed of 34 brewers operating across the province, producing nine million hectolitres of beer. For those of you who don't know, a hectolitre is equivalent to 12 cases.

We have \$2.5 billion annually in sales and, given that beer is a very highly taxed commodity, as many people are aware, we pay \$1.2 billion a year in commodity tax revenues to the provincial and federal governments, the lion's share—\$840 million—of which goes to the province of Ontario. We're also a unique industry, we believe, in that 90% of the \$1.2 billion in imports that we purchase every year that go into the manufacture and production of beer is purchased from Ontario suppliers right here in the province.

Some 10,500 different small and medium-sized enterprises do business with our industry. In terms of employment, when you include the Beer Store and all the breweries, we employ 6,700 people directly, and indirectly another 51,000 related jobs through our supply team.

On the issue of environment, on page 3 of our presentation you will see that we really consider ourselves to be the benchmark in terms of full producer responsibility in packaging stewardship. We operate through the Beer Store system a deposit-return, refillable-bottle-based container management system. Every container that is sold through our system contains a deposit, be it a bottle, a can or a keg. That deposit serves as an incentive to encourage consumers to return the packaging to the Beer Store, and when they return their bottles, their cans and their kegs, the fortunate benefit is that all related packaging piggybacks along with it and it all comes back. Hence, we achieve today what we believe is an unmatched diversion performance of close to 98%. Some 97.6% of all the packaging that goes out of our system is returned. We sell each year about 500,000 tonnes of packaging and we get back 495,000 tonnes. As a basic comparison, that's equivalent to about 75% of what the entire blue box diverts each year. Our diversion rate on containers is about double what the blue box diverts in terms of other beverage containers.

We are also unique not only in terms of our performance but in terms of our financial contribution to our system. Unlike other waste management systems, we fund our system 100%. It's funded by brewers. There are no taxpayer subsidies or taxpayer supports for our system.

The unique thing about it also is that we have operated our system voluntarily for almost 75 years. Since Brewers Retail was first incorporated back in 1927, we have operated a deposit-return system. Relevant to Bill 90 that is before us today, that system has operated at no cost to government, as I mentioned, with no need for cumbersome, costly regulation or reporting requirements or monitoring or any other regulatory intrusions into our business. It's been a voluntary system that has worked quite effectively and with demonstrated performance, as I mentioned, for close to 75 years.

We really see ourselves as a key component of Ontario's waste reduction effort. We are close today to 42% of all the consumer packaging that's diverted in Ontario, we fund our system 100% and it doesn't go into the municipal blue box stream. We believe that by doing that, we help municipalities avoid \$31 million in waste management costs. If our waste was not managed through our own system, it would be recovered from the blue box today, which is funded by municipalities. By the fact that we take control of our waste ourselves, they don't see our waste, they don't have to pay for it and therefore they avoid \$31 million annually in costs.

In light of our performance, our pre-existing nature, we believe that our system should be recognized in Bill 90 and that we should have representation within the WDO that is commensurate with our contribution and our pre-existing nature.

Bill 90 is clearly an instrument that has an intent behind it. The intent, from what we can determine from reading the bill, is that it is intended to force what we would see as non-compliers to comply, people who have not yet voluntarily elected to establish and fund their own systems. This bill enables the government to require the producers of those wastes to convene administrative bodies, to establish programs and to implement funding mechanisms. It also will enable the government to require producers to participate in the blue box and require those producers to pay something. And long-term it will ensure that the government has the ability to ensure that operators of those systems meet and maintain performance obligations.

As we look at the bill, that poses a big question in our mind: should a proactive industry such as ours that has met or exceeded the expectations of Bill 90—Bill 90 purports to have blue box users pay 50%. We pay 100% of our system costs; we exceed the objectives of Bill 90. So should industries such as ours which are proactive and have established our systems be subject to the same burdens and requirements as what we see with non-compliant industries? Furthermore we believe, given the significant role we play in waste diversion, that recognition of our superior performance within the bill makes sense.

But as we read Bill 90, we see that it really envisions what we see as a one-size-fits-all approach for everybody. There's nothing in the bill that recognizes the superior performance of the Beer Store system at all, the financial contribution of our members, our pre-existing nature—the fact that we've operated voluntarily for 75 years. The bill would require that the beer industry would become another industry funding organization and have to convene new administrative bodies and file and get a plan approved, when we've been operating for 75 years with a system that looks quite fine. It just seems kind of strange that a pre-existing system would have to reapply to get approval to operate and be subject to the same requirements as systems that haven't operated voluntarily and are being required to operate. If we're not required to set up an IFO, the worst situation for us would be that,

given our packaging is beverage packaging, we would have to apply for an exemption from the blue box, which seems again rather a strange thing for a system that has double the financial contribution and achieves double the diversion performance, that we would have to apply to be exempted from quite frankly an inferior system.

So given that Bill 90 is really designed to force non-compliers to comply and we see ourselves as already being compliant, we do not believe that we should be subject to the same requirements as non-compliant industries. We believe that recognition of the beer industry's packaging management system within the bill is appropriate, fair and reasonable. We think that recognizing our system within the bill will actually improve the bill in its stated purpose. The stated purpose of the bill, its title, is "to promote the reduction, reuse and recycling of waste." Our system does all of that and we're close to 50% of what's diverted today.

In terms of how we see ourselves being recognized within the bill, we believe that can be accomplished through a clarifying amendment to section 22, which is a section that requires industries to convene an industry funding organization. By clarifying in that section that the Beer Store not be declared a designated waste and therefore not be required to establish an industry funding organization, given that we already have those administrative structures in place, that would be an appropriate amendment to the bill. But in making that recognition and incorporating us within the act and within the WDO, we don't believe that should not come with some form of obligation. Hence we are prepared that our ongoing recognition within the bill would be contingent upon us maintaining a diversion and financial performance that would exceed what is the alternate for beverage packaging, the blue box. So to the extent that the beer industry continues to achieve a financial contribution of its members that exceeds the 50% that's being proposed by the blue box and that our diversion to our system exceeds the diversion rate achieved by the blue box, then we should continue to have our clarifying section in section 22 retained.

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We're also prepared to demonstrate that we will continue to achieve that performance by way of preparing and submitting to the Minister of the Environment an annual report that will be audited by a third-party auditor appointed by ourselves, which will demonstrate that we are continuing to achieve our diversion levels that exceed the blue box. We'll provide a copy of that report to the WDO group and then make it available to the public, and we will participate in the WDO through an executive seat on the board and lend our support to its efforts.

That concludes our presentation.

**The Chair:** That gives us just about two and a half minutes per caucus. This time the rotation will start with Mr Marchese.

**Mr Marchese:** You make some good points, obviously, but clearly they can't recognize you, because if they did recognize what you do, it would point to some

of the deficiencies of the bill. So they can't do that. Do you understand?

The fact that you operate voluntarily and that you pay the full cost is a good thing, and the fact that you have this bottle deposit-return is one of the things we should be doing. But again, if we acknowledge that, it recognizes that the government is not moving in that direction, so I can't do that. I just thought I'd—

**Mr Valiante:** I don't know if I'd agree with that. In bringing the Beer Store system into the bill, I think you're creating a unified policy framework that recognizes different approaches. The bill doesn't prescribe one course of waste diversion over another; it doesn't say that you must be in the blue box or you must operate a deposit-return system. Those would all be encompassed under one umbrella, one policy framework. Over and above that, I think recognition of an exemplary system strengthens the bill. It sets an example, and again, it brings consistency to the bill. So keeping the Beer Store system out, I think, weakens the bill.

**Mr Marchese:** Yes, I'm not disagreeing with you, I'm just trying to articulate a position for the government, which I won't tell you. Because Ted will tell you, "Thanks for coming. You guys are really doing great work." I thought I'd put forth a position for the government that they may not defend.

**Mr Valiante:** OK.

**Mr Marchese:** Because I think what you just said is useful. It does recognize different approaches. We support reusing, because we think it's a superior way of dealing with things other than recycling. The Toronto Environmental Alliance today talked about the hierarchy which says reduction is the best way, reusing the second best, followed by recycling—recycling is at the bottom—and disposal is the last one.

I'm suggesting and I'm recognizing that what you do is good, and if they did that and recognized your work, it would be a way of saying that reusing is a good thing.

**Mr Newton:** It seems to have merit. But the stated intent—

**Mr Marchese:** I agree. I didn't want to be misunderstood.

Why is it that you're able to do it and other companies are not able to get into this system of reusing bottles? Why can you do it and—

**Mr Newton:** I guess it stems from the way we look at our business. We don't necessarily look at waste management and environmental management as being at cross purposes. The management of our waste in this way and the recovery of our containers, the reuse of our containers, actually helps save us money. We can take a container, a refillable bottle that costs us 14 or 15 cents to purchase, and we can use it 15 to 20 times. Even when you incur the cost of washing and recovering it, it's significantly less than taking a single-use can that costs you 14 or 15 cents and sending it out the door once.

We found that entrenching waste management environmental practices into our business can not only help us save money and improve the performance of our

business, but it has that ancillary benefit of benefiting the environment. As to why others haven't got to the point of seeing that, I guess you'd have to ask them. I can't speak for them.

**The Chair:** The government—oh, we seem to have a number of interested parties, so we'll start with Ms Mushinski.

**Ms Mushinski:** Thank you, Mr Newton, for coming in this afternoon. It's a very interesting presentation. I was particularly impressed with your economic contribution statistics.

I do have one question, and it pertains to the 2.5% that isn't returned. I'm assuming that's in because you manufacture products that end up in other stores, like grocery stores and the LCBO. Do you receive or accept bottles that are returned from those establishments to a beer retail outlet?

**Mr Newton:** All beverage alcoholic products, all beer products the industry sells in Ontario, whether they're sold through the Beer Store, the LCBO or a manufacturer's onsite retail outlet at the manufacturing premise, are all redeemable for a deposit and recovered at the Beer Store. So even though the LCBO sells beer products and generates a profit from the sale of those products, the cost of recovering that waste is incurred by us at the Beer Store. So we recover all that packaging.

**The Chair:** Thank you. Mr Miller?

**Ms Mushinski:** No, I have—

**The Chair:** There's only two and a half minutes, so are you—

**Ms Mushinski:** I just have one very quick question.

**The Chair:** OK, go ahead.

**Ms Mushinski:** What is your concern about applying for exemption from the blue box IFO? You said the result would be a new bureaucracy and additional costs with no added value. I'm just curious. Given that you pretty well recycle 100% of your returnable bottles, why do you have a problem exempting yourself from the IFO?

**Mr Valiante:** If you look at the intent of Bill 90 as enabling legislation—and my understanding is that it's designed to create the administrative constructs which we'll then use to divert waste. So a waste diversion organization and an industry funding organization—those are defined in the bill. What we're saying is those administrative constructs already exist within the beer stores. There are 60 brewers that sell through the system. We've got everything from fee schedules for recovery of containers, different types of containers, we contract with a third-party recycling operator and we've got dispute resolution. Having 60 different brand owners under one roof, it tends to be a little raucous at times. We have a process that's worked for 74 years in negotiating various things. So all of that exists. That portion of the bill is duplicated if you apply it to us. So what we're saying is it doesn't apply; we've already got that. What we are subject to in terms of oversight is our ongoing performance and we're willing to demonstrate that on an ongoing basis. Basically what we're saying is you don't need to duplicate it.

**Mr Bradley:** There have been people in the past who have advocated selling beer and wine in corner stores. I've heard of that, anyway. What would be the impact on your environmental program if a government of Ontario were to permit beer to be sold in corner stores across the province? How would that impact upon you?

**Mr Newton:** The corner stores today don't operate a deposit-return system for any beverage containers. It would depend on whether they would do that in the future. If not, all our beverage packaging either ends up in the landfill or in the blue box, at significant cost to the municipality. You'd migrate beer packaging from the system that today operates at 100% funding by industry into a system that has inferior performance, diverts half the waste and has the taxpayer picking up what's proposed to be 50% or more of the cost of managing that waste.

**Mr Bradley:** So I draw the conclusion that, environmentally speaking, that would not be a good policy to implement. In fact, our Legislature has voted on it and voted it down, but that would not be an appropriate policy environmentally to implement. Would that be a fair assessment?

**Mr Newton:** It would clearly have an impact on the current funding and collection of our waste. There would clearly be an impact, yes.

**The Chair:** Thank you, gentlemen, for coming before us here this afternoon. We appreciate your input.

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#### CHRISTINE LUCYK

**The Chair:** Our next presenter will be Ms Christine Lucyk. Good afternoon and welcome to the committee. I'll just remind you that we have 10 minutes for your presentation here this afternoon.

**Ms Christine Lucyk:** Thank you to the committee. I'm here just as an ordinary citizen, unlike many of the other presenters. By way of background, I might indicate that I have been in the environmental business for over 30 years. I've been looking at this bill and I've been parsing it. I just have three quick comments to make. The issues are recovery objectives, accountability and equity. Let me deal with the first one first.

My question is, why are there no specific goals for recovery? In other words, we look at recycling rates and things like that but we don't seem to have a specific target. My question is, if you don't have a goal to go for, you don't know when you've arrived, so why don't we have some objectives? I actually did participate in the Blueprint for Waste Management development back in the 1980s, and it had very specific goals and targets which I thought were laudable, yet we seem to have lost that kind of perspective on things.

My second issue is that of accountability. I'm particularly concerned that this legislation sets up basically what is called an unaccountable and unelected body to make rules for waste management. We've seen protests against the G8 group, which is similarly unelected in many ways and similarly has no charter. Here we will be

seeing what is essentially a private group representing members of major trade organizations, but the small companies which are not members of the organization will not be effectively represented and have no say. The WDO will have rule-making responsibilities, which essentially I think usurps some of the powers of the Legislature and runs contrary to what was put forward in the McRuer commission recommendation, which you may recall was a commission back in the 1960s—I have a long memory. It essentially said you can't just put everything into bylaws and regulations; that a lot of legislative procedure should actually be dealt with by the Legislature, not allocated to third-party groups. So I am concerned that there is an organization which will have considerable effective legislative responsibilities, although they do not have the full accountability.

Let me look specifically at section 4, about the responsibilities of the WDO and the establishment of a dispute resolution mechanism and monitoring. It effectively makes the WDO self-governing, without independent third-party oversight among the parties involved. As we all know, recourse to the courts is expensive. There is a requirement that a business plan be submitted to the minister and be made available to the public, but it does not specify that there should be public input to the development of the business plan. These are minor details, and I think the legislation can be amended and improved by requiring those things.

Finally, let me look at the issue of equity. This has been brought up by a number of other organizations, so I don't want to beat a dead horse. There seems to be a perverse incentive in this bill. If you go to the dump, you go for free, but if you are doing the right things right, in other words, you're doing recycling or reduction, you have to pay for that privilege. I would urge the committee to look at some way of encouraging that all businesses and residents pay in a responsible way for waste reduction, all of the three Rs, because to tag recycling alone I think is misplacing the incentive in this particular case. I thank you for the committee's time.

**The Chair:** Thank you very much. If you're willing to answer questions, we've got about a minute and a half per caucus. This time we'll start with the government.

**Mr Arnott:** I just want to thank you very much for coming in. You said you've had an interest in the environment for 30 years, and we now have the benefit of some of that advice, and we appreciate it.

You talked about garbage going to the dump for free. I just want to let you know that in my community, in the county of Wellington, I pay \$1 per bag. In our area, my experience has been that where municipalities have brought in a fee per bag of garbage, people at first are somewhat disappointed, but they come to accept it very quickly and realize that it helps people reduce the individual waste stream from their household. I think it has that positive effect.

**Ms Lucyk:** I certainly appreciate that—

**Mr Arnott:** I don't know if that's the case across the province, but I would encourage other municipalities to consider that kind of an approach.

**Ms Lucyk:** I'm sorry to have interrupted you.

**Mr Arnott:** It's OK.

**Ms Lucyk:** I certainly appreciate that aspect. What I'm thinking is that this bill tries to shift the cost back to the producer as opposed to the consumer. What you're dealing with is the consumer, which works admirably, as you are suggesting. What I'm suggesting, though, is that if you try to treat all products going into the waste stream equitably, then you have to shift the cost back to the producer rather than on to the consumer.

**Mr Bradley:** I recognize what you're saying. What Ted has said is what exists in a number of municipalities now, and that is, particularly beyond a certain number of bags that are allowed to be placed out, there is a stipulation that you must pay further than that or you must pay for all; different municipalities have different views on that. Do you believe that the Ontario government, through legislation, should specify that municipalities in fact must charge on a per-bag basis?

**Ms Lucyk:** You're going to get a waffling answer from me because it's one thing—

**Mr Bradley:** You may be a cabinet minister some day.

**Ms Lucyk:** I wouldn't wish that on myself. It's a real challenge. I've looked at this issue from a number of points of view and you end up with a situation in Toronto where I see garbage bags routinely disposed of in our public parks or the subway or wherever. So it's not a cut-and-dried answer. I would say give the municipalities the option to charge, but the quid pro quo would be, make sure they deduct it from the tax bill.

**Mr Marchese:** Just to tackle another theme with respect to the WDO body and how it's constituted, it's not likely to change. The government is just going to proceed with that body, as you know. Right?

**Ms Lucyk:** OK.

**Mr Marchese:** I can guarantee it.

**Ms Lucyk:** Tell me the honest truth.

**Mr Marchese:** I can guarantee it. We need to be frank with these things or there's no point.

**Ms Lucyk:** I know.

**Mr Marchese:** Otherwise we deceive everybody into thinking that we have a great deal of knowledge, and we don't. But let's just think that we do.

**Ms Lucyk:** Let's dream the dream.

**Mr Marchese:** Yes. Some people have said we should have more municipal representation, because these people are elected and it would be better to have—I believe they have municipal representation.

**Ms Mushinski:** More than what?

**Mr Marchese:** Yes, a couple. But the majority of them might be municipal representatives, because they're elected. Do you think that's a good idea? Maybe that's doable.

**Ms Lucyk:** My comment would be that, yes, I would like to see maybe one or two more municipal representatives, but I'd also like to see some citizen representatives. Right now there are very few of those. It's

been at-large kinds of parties that could participate who have an intense interest in the environment.

**Mr Marchese:** I agree. How would we do that? I'm sure there are thousands of people across Ontario who want to be on that board. How would we select such a person? I think it's a good idea.

**Ms Lucyk:** It's probably through the usual process of appointments through cabinet, unfortunately. Maybe there could be a way of organizing things so that—there are any number of NGOs out there, such as the Recycling Council of Ontario, who could put forward a number of names.

**Mr Marchese:** Are there Tory environmentalists that we could invite? That could work.

**Ms Lucyk:** I don't know. I don't know the political stripes.

**The Chair:** There's one who chairs this meeting. Thank you very much for coming before us here today. We appreciate it very much.

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#### ALTECH ENVIRONMENTAL CONSULTING LTD

**The Chair:** Our next presentation will be from Altech Environmental Consulting, Mr Rod Shaver. Good afternoon. As a reminder, we have 10 minutes for your presentation today.

**Mr Rod Shaver:** It's 3 o'clock on the Friday before a long weekend, so I hope nobody holds that against me right now.

**Mr Marchese:** And don't hold it against us.

**Mr Shaver:** I don't want to hold anybody up.

My name is Rod Shaver. I'm the director of the site investigation and remediation services division at Altech Environmental. It's a small environmental consulting company and I'm just here to talk briefly about Bill 56, the brownfield—

**Mr Marchese:** We almost forgot about that.

**Mr Shaver:** Yes, I know. I was listening to all the recycling stuff. I was hoping I was in the right room for a while.

I sort of rushed something out. To be perfectly candid with you, I booked my appointment here at 3 at about 11:30 this morning. The handout that you have is something that I submitted on June 14 to Chris Lompart, whenever he was asking for these things about the Brownfields Statute Law Amendment Act. One thing I have learned—and it's my first time in front of a government committee—is that everybody seems to have their own little bailiwick. I hope mine isn't too small to grab your attention, but if it tends to wander, stop and ask a question. I am not a professional speaker, nor am I a lobbyist. I'm just a geochemist, so bear with me while I get through this.

I was trying to think of a certain way to discuss what I wanted to discuss, and really it is that part of the brownfields act sets up a number of different things and one of them is, I suspect, to give confidence in the people

who are carrying out the environment work, or the consultants. There's something called a QP or a qualified person process where people end up getting admitted and go through a little bit of hoop-jumping and become qualified people so that they can work under this act. That's one of the regulations that's going to come later. Because we work in Ontario, but because we also work in the States and across the country, to me, anyway, there's a little bit of a disconnect between the QP eligibility process and the implementation of what you're supposed to do on the site.

Although I've been thinking about some way to present this in a manner which is not reading, I would like just to read three paragraphs from my letter. I thought a lot about the letter and I can't necessarily think of any better or shorter way to say it than that, if that's OK. It's just three paragraphs. It starts with the fourth one down:

"The number of times a phase II ESA is completed," and a phase II is physical investigation at a site as opposed to historical review, "and contamination other than what was identified in a phase I is encountered is much higher than may be realized. Further, the Guideline for Use at Contaminated Sites in Ontario...outlines 117 parameters in the tables of generic criteria (for each soil and water). It has already been suggested by some parties, that 'Under Bill 56, accountability is intended to rest with environmental consultants who are recognized as qualified persons....The significant additional responsibilities and risks assumed by such parties in the new system will likely impact adversely on the cost and complexity of site investigations.'" This was the Smith Lyons law bulletin from May of this year. "Proponents..."—who I'm assuming for the cases of my conversation are developers for brownfields—"will not, under most circumstances, be convinced of any necessity or requirement to undertake 'significant additional' environmental testing in order to facilitate the achievement of the 'significant additional responsibilities' that are assumed by a consultant who is a QP. Proponents will not, in most circumstances, approve additional funds for exploratory testing for any contaminant, or in any area, other than those that are clearly and explicitly identified and delineated...." For example, around underground storage tanks and such things.

"Additionally, all QPs will be viewed as identical by the proponent because all are 'approved' qualified persons, even if each QP involved with a particular site or process selects a different approach, identifies different risks, and proposes a different future strategy and investigative plan. The only practical difference between the QPs will be the quoted dollar amounts for the work each QP proposes in order to sign off on the report of site conditions. As such, a prescriptive process for personnel selection with respect to the QP is seemingly not matched by a prescriptive process for the work process undertaken by that same QP. In the absence of a prescriptive process, the proponent"—or the developer—"will select a QP with the most minimal work program," in other words,

the lowest cost, "which has an associated higher risk.... The option of proponent payment of increased costs for the 'significant additional responsibilities' undertaken by the QP will, when the rubber hits the road, not be an option at all. Again, this is simply because the only selected option which will be recognized by a proponent matches exclusively with the most inexpensive work program. The associated QP with perhaps an unreasonable and/or unrealistic risk tolerance (in the name of business development) will dominate the industry in almost every circumstance.

"It is reasonable to assume that as contaminants are not identified presently on investigated sites through either error or lack of funds for proper investigations, that it follows that by reducing the work programs for brownfields through Bill 56 to a sheer dollars game heading towards the lowest level, more errors and oversights will occur. The logical conclusion of this is that the RSCs will experience significant fallout a few years after this is implemented due to the discovery of 'false or misleading information.'"

I'm not going to read the last couple of paragraphs. But being a consultant who does only environmental work—we're certified as an engineering company, but we don't build bridges and we don't make roads. We only do environmental work. I started in 1989, and although I'm not all that particularly old yet, I hope, I've seen the process where the ministry has been pulling itself back from liability. That's what the guidelines for contaminated sites were about.

You may recall that in 1994 when they first came out with that, the ministry decided that only professional engineers could sign on any contaminated site cleanup or investigation because they had insurance. The ministry will not give you an opinion any more; they'll only give you an acknowledgement. So it's a process of pulling back and back, and the qualified persons process is another way of foisting the consultants forward, and that's fine. I don't mind a dollars game, because it has to be competitive. That's fine. But it has to be a dollars game apples to apples.

I know I only have 10 minutes and they're almost up, but the thing about it is that in any other jurisdiction where people are qualified, there is a prescriptive process. There is no prescriptive process here. In fact the whole guideline is completely voluntary; it says that at the beginning. What's going to happen is that if you think consultants don't get along now and have different ways of approaching a site, wait until they are all seen to be the same, and a developer goes across on a brownfield site and says, "him" because he's \$500 cheaper than the other guy, or \$5,000 cheaper than the other guy, or \$500,000 cheaper because it's a \$20-million job.

The first time they put in a loading bay or footings and you find out somebody has missed something, and as soon as "false or misleading information"—which is a quote directly from the act—is found and the report of site conditions isn't good any more, that consultant ends up getting sued because he had a low risk tolerance, and

the guy with the higher risk tolerance who maybe knew what was going on on the site didn't get the work. So a couple of years from now, you have people who are out of work who knew what they were doing, and people who don't are in a bunch of lawsuits.

It's not a particularly high-level policy thought paper I'm putting forward. It's something I've just seen. There are any number of consultants who are professionals in large companies and are professional engineers, and you will get any array of opinions from them on any site. So to assume that just because they're qualified persons they're going to come up with the same thing would be incorrect. I guess I'm here advocating that either a prescriptive process be developed under this—"If you find this, you do that"—or you do away with the qualified persons requirement, because it will simply be dollars and that's it. Nobody will care about technology. It will be, "How cheap can you dig it up and take it to a landfill?" Because right now that's the cheapest thing anyway. It's going to be a dollars game for taking away the lowest number of trucks and sampling, and that's it. For what it's worth, there it is.

**The Chair:** Thank you very much, Mr Shaver. You've gone slightly over, but that's not a problem. I do appreciate you bringing your perspective in dealing with this particular part of the act today.

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#### JANNOCK PROPERTIES LTD

**The Chair:** Our next presentation will be from Jannock Properties Ltd. Good afternoon and welcome to the committee.

**Mr Mitchell Fasken:** Thank you, sir. I've just handed my presentation to Ms Stokes, and she's circulating copies of it.

Chairman Gilchrist and members of the committee, I appreciate the opportunity to come before you today. My name is Mitchell Fasken. I'm the president of Jannock Properties Ltd. I would consider us a small development company, active throughout the GTA, and this is a field we have been active in for many years. We're not here as consultants or as an advocacy group. We're here as people who have been committed to infill urban re-development and the issues of brownfield development for some 10 years.

What I've given you is kind of a summary of my presentation, and although still somewhat lengthy, I've tried to break it down into the keys points to cover off, by the time we're toward the end of this presentation, what I believe are the eight key issues that need to be looked at.

Both Jannock Properties and myself personally have been active in this field for some 25 years. Jannock Properties was an evolution of Jannock Ltd, the owner of Canada Brick, Vic-west Steel, a number of large manufacturers. So I fell into the area of brownfield development and brownfield remediation through necessity, not necessarily through want. Being affiliated with a large corporation has forced us and required us to be mindful

of doing things in a proper manner that will protect our shareholders, our directors and officers of the corporation while maintaining the integrity of the developments.

We have been successful in developing a number of brownfield sites in the absence of this legislation. But this legislation is something we have been advocating and working on with provincial, local and regional governments for years, for fundamental changes to the legislation to utilize brownfields in a manner in which they have not been used before.

Our objective is really threefold: to add certainty to the process, to clarify the process which identifies the requirements for brownfield cleanups and decommissionings, and to make brownfield development better and more attractive than greenfield development.

The last point is really the focus of where the balance of my presentation will take you today. We do only brownfield development. Where I have done greenfield development on my own, I can tell you it is a whole lot simpler, a whole lot faster, a whole lot easier. You don't fight with residents, you don't fight local issues, you don't fight anyone, unless you're in the moraine—and we've seen the issues associated with that—or the Niagara Escarpment. They both carry the same issues.

But within urban centres, intensification and infill development is clearly something that we've all seen for years is advancing and an issue we have to address. The current environmental legislation, Bill 56 absent, does not allow us to effectively use brownfield sites.

I often think of it as a triangle—I'm going to digress just for a second. Brownfield sites are a triangle. At the top of the triangle are the sites that are very easily remediated, cleaned up—very few environmental problems. Over the past five years, with the improvement in the economy, those sites have disappeared quickly. We have now migrated to the middle of that triangle, to the more difficult sites. With the more difficult sites come issues of off-site remediation, more complex remediation and more difficult market cycles. Then we move to the sites that sit at the bottom of the triangle, which cannot be effectively cleaned up under the current standards, have significant off-site problems and/or are in markets that simply do not allow economies of scale to implement remediation.

This bill represents what we believe is a significant step forward. If it was Bill 56 or nothing, we'd take Bill 56 if we had our choice. But we believe there is an opportunity, through the standing committee and others, to adjust Bill 56 and make it better. The opportunity to open the door for effective use of brownfield sites is clearly the step this province is taking with Smart Growth and intensification, and we need the tools. Ten per cent of the city of Hamilton sits in brownfield sites; you can't use them. More than 10% of Hamilton sits in brownfields, and I tell you it's a whole lot more difficult doing business in Hamilton, because of the economies of scale, than it is in Toronto. In many cases the issues in Hamilton are much more significant in terms of decommissioning.

Bill 56 has been a successful tool as a result of the commitment of the parties at the table, both the provincial government as well as the stakeholders involved. The key concerns are really focused in two areas. On the second page of my synopsis, I describe it in what I consider to be two cases. This is really where the issues of Bill 56 come to roost.

The first case is where you're dealing with a contaminated site where all of your issues are within the property boundaries—similar to within the opening among these tables. Provided all of your environmental issues are within your sandbox or within your property boundaries, they are under your own control to manage, to deal with the decommissioning, and the responsibility and liability falls solely in your hands as the owner. Bill 56 has made significant strides towards redeveloping the sites with the contamination solely within the boundaries of the sandbox much more effective and much more viable. In those areas, I really applaud what the government has done. I didn't expect them to go as far as they did, and we are very supportive of those moves.

But the second case is where the contamination has gone beyond the boundaries of the sandbox. More and more we're hearing of cases where that has occurred. What we are not recommending in any way, shape or form is abrogating the responsibilities of the polluter to pay for contamination. But the reality is, in many of these cases, the polluter no longer exists. They're bankrupt, they're no longer in existence, so we're now sitting with orphan sites in the hands of trustees and/or municipalities where the polluter, the party responsible to pay for the cleanup, is long gone.

The best example of this is a site which I recently looked at about six months ago in a mid-size city outside of Toronto: a prime downtown location suitable for redevelopment. The economies of acquiring the site were right, the price to acquire the site was right. The fact that it had off-site contamination 600 metres off of the site made it impossible to acquire. The reason for that is that the current MOE policies look to the owner of the property to be responsible for contamination irrespective of whether they are the polluter or the non-polluter. In this case, the site continues to sit abandoned. The owner is bankrupt, no one is going to clean up the contamination, so it continues to sit.

Our recommendations try to address what we believe are the key issues which can take Bill 56 and make a great piece of legislation into an incredible piece of legislation. It will allow areas within the city of Toronto, Hamilton, Kitchener-Waterloo and London to deal with those problem sites where the contamination issues affect other parties and affect other issues.

I'd like to take you to the page that deals with recommendations in my brief. It should be, I believe, on about the third page. There are eight key points, and we'll walk through them.

The first is to define—we need to add a definition to Bill 56 which separates the polluter and the non-polluter. As I've said, by no means do we want to abrogate the responsibilities of the polluter to be responsible for

cleaning up sites, but we also want to use this legislation to create incentives for the polluter to clean up, deal with it and know that when it's cleaned up, his work is done. But by the same token we must create incentives for the non-polluter to be able to acquire a contaminated site, deal with the on-site contamination, stop the migration off-site and make things better than they are today because in the absence of that, no one else will do it. So I believe strongly there need to be changes to the act to define the two parties.

With respect to off-site contamination, the non-polluting owner in many cases cannot fully mitigate off-site contamination. Nor should they be responsible for diminution in property value or the long-term effects of contamination off-site, because, unless you're prepared to create an opportunity, an incentive, for people to acquire the sites that are the source of the pollution, stop it and obey it, we will never address the off-site contamination issue. We need to find vehicles and establish protocol which will separate the polluters from the non-polluters in this particular area.

1520

Once you've established the difference between the polluters and the non-polluters, there needs to be modification to the legislation which will limit MOE liability—and I don't know if we can go as far as civil liability; I know we'd like to but I don't know that we're ever going to get there—in terms of dealing with the EPA and clearly defining those parties.

The fourth requirement is that there needs to be a transitional period. All we do is acquire and develop brownfield sites, and it's a very hands-on process. It's a very scientific process. It's as much an art—not unlike politics—as many other things. We have to be able to adjust our work based on what we find every day. So a decommissioning requires that hands-on ability to turn the site over and start to understand what's underneath the ground, often in manners that we can't understand at the very beginning.

The transitional period would allow a non-polluting owner an opportunity to acquire a site and implement a cleanup program while they are confident that the Ministry of the Environment and everyone else will stand still. There won't be orders, there will not be litigation. It will give them an opportunity to go in and start to do what needs to be done to deal with the contaminated site. And it's an integral part, otherwise you have no incentive to move toward the contaminated sites.

The issue of timely approvals has been raised with ministry staff and with the lawyers in the consultation process. This really deals more with matters of site-specific risk assessments, which are becoming a trend for a more complicated cleanup process. Today there are no time lines and there is no appeal process. So if a site-specific risk assessment is completed, which could take two to four years to complete, after spending hundreds of thousands of dollars, the Ministry of the Environment is not required to give you a decision, and if they give you a no, you have nowhere to go.

It's more of a problem today because of the turnover that occurs within government staff and the changes that are occurring. Where you used to be able to have working relationships with staff, some of that is changing. We're not seeing a reduction in the staff that is working in these areas but rather a change as people are moving throughout the management structure, consistent with any other company we're dealing with in Canada.

So there needs to be an opportunity for (a) submitting a record of site condition or a site-specific risk assessment and knowing that within 60, 90, 120 days the director must give you an answer, and (b) if they say no, or they decide that as a result of an audit you fail on a matter, you need to have a body to appeal to, to go to and say, "No, they've made a mistake," or "I disagree," to let you correct the problem. You need to make this a process that people want to be involved in and know that they can get through versus one that you cannot deal with.

The next item is registration on title. Registration on title really falls into two areas. It is for site-specific risk assessments and stratified cleanups. I don't know if any of you have seen the document that the Ministry of the Environment registers on title. It used to be called a certificate of prohibition. They are now going to change the name of it, but it is the scariest document you've ever seen in your life. It's about two pages long, it's been written by a lawyer and it basically tells you you're a criminal if you dig anything out of the ground and do anything with it other than take it to a landfill site. If you're a lawyer, an environmental consultant or a specialist, you understand the document, but give it to a couple who are buying a new house and they're running out the door as fast as they see that document. I say that from experience. I developed a small site in Hamilton, just above the bay, which I did a stratified cleanup on. I sold it to a small builder. It's only eight houses. He loses, on average, 12 purchases for every one that is successful. That's not just 12 offers, it's 12 parties who have committed, said yes, and when their lawyer sees the registration on title, they're gone. Yet it's a safe, effective method of decommissioning. There is no health-related risk.

The Ministry of the Environment has recommended that we establish a registry so that everyone will know a site that is decommissioned. You say to your lawyer, "Go search the title." He'll search the registry and he'll know your site has been decommissioned and there was a stratified cleanup. What we would like to see is that for generic stratified cleanups and level 1 site-specific risk assessments, registration on title not be required, because it will promote two of the most effective methods of decommissioning to be used more actively.

I'm quickly trying to get to the end of this because I know I'm going slightly over my time.

The second-last item is limiting the use of the record of site condition. I don't know if you've heard it today but I believe you'll hear it as this matter goes forward. Some parties would like to see us broaden the use of the record of site condition, add more categories, make it

more complex, use it for building permits, demolition, everything. It then becomes a political impediment versus a reporting tool. All I'm going to ask you is, in your review of this legislation, do not broaden the use of the record of site condition to start to be used as a tool to force things that shouldn't happen to be done. The objective here is to make this a process that promotes brownfield development. We don't want to use it as an impediment.

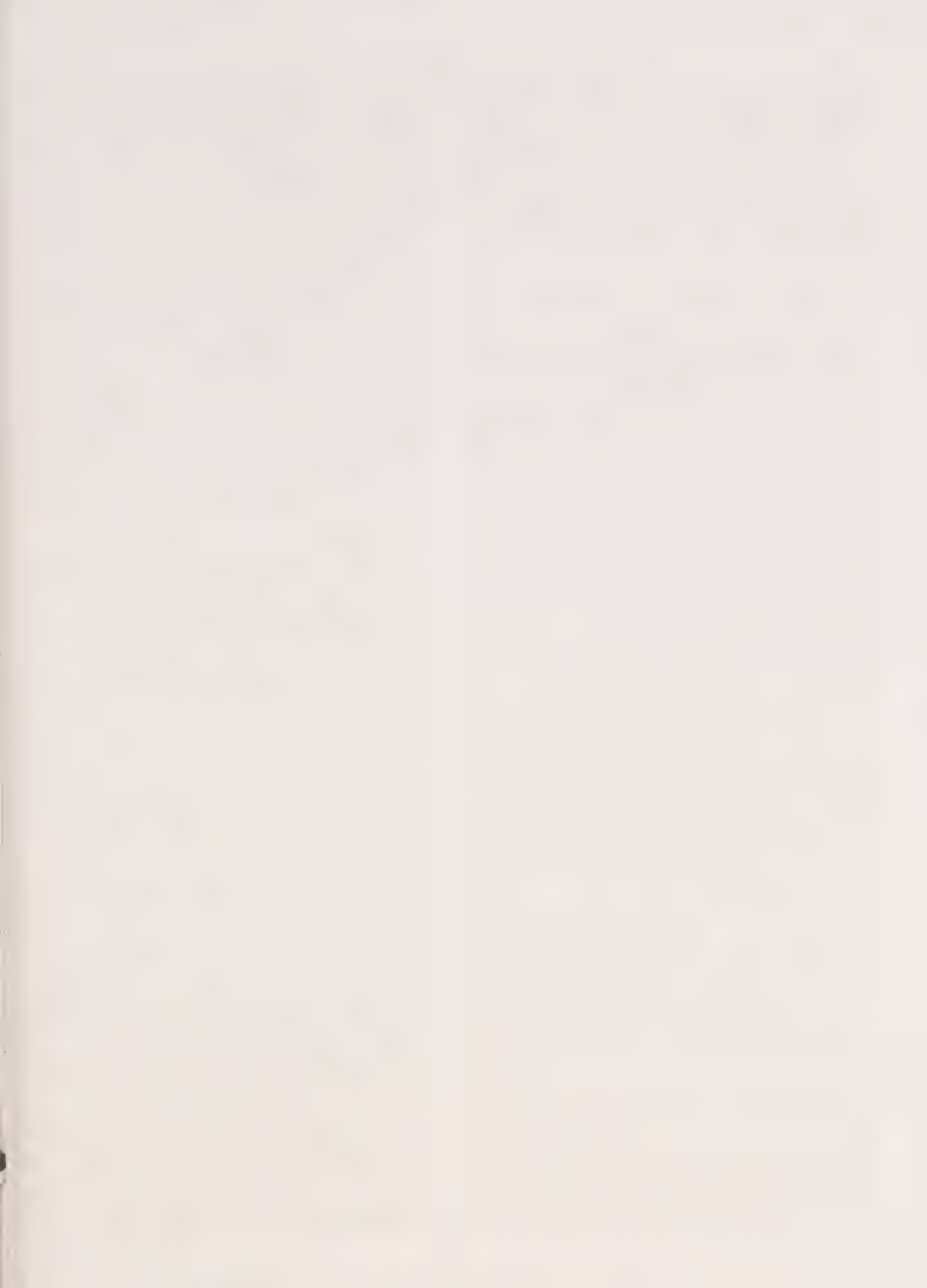
The last item I'd like to touch on is the need for Bill 56 to encourage and require changes to regulation 347 and other tools used by the government to encourage the recycling, reuse and reduction of waste from sites. Today when you dig materials out of the ground, if they do not comply with the necessary criteria and they are not inert fill, they are considered a waste and must either go to a proper receiving site or a landfill. It's a position which is ludicrous.

For six years now, regulation 347, the MOE regulation which deals with soils, has sat on the desk of the Minister of the Environment unresolved. They proposed changes which would have advanced it. Senior management at MOE have done everything they could with this industry to help promote those issues but there has not been the will to bring the regulation forward to date. It needs to be done because it's an integral part. Everywhere we turn, you're closing landfills. How do you decommission a brownfield site and clean it up if everything that doesn't meet the criteria has to go to a landfill? There needs to be flexibility and adaptability and you need to encourage people to reuse the products that come from the sites.

Going through my notes, there is one item I missed and I'd like to come back to it—I believe it was the second item—and that is, where we are dealing with non-polluting owners, it's been the ministry's practice in the past, where it seeks litigation, to go after officers, directors, shareholders and other parties. I really like my wife, my kids, my house and everything else I have and I am not going to acquire a site where I'm going to put everything at risk because someone else has left a problem behind. When we come back to the principle of a non-polluting owner versus a polluting owner, as a non-polluting owner, I'm prepared to put the company that's acquired the site and the equity in that company at risk. But I can't put everything at risk. So the second change or the third recommendation we've had is to limit, for a non-polluting owner, the liability to the registered owner. If someone decides to acquire a site in their personal name, so be it, but most people will acquire them in shells to protect themselves against that potential third-party liability.

In summary, Bill 56 is a great tool. Although there is not large provincial or federal funding added to it, I don't think we need it. I think the TIFFs that have been included in the existing legislation will let the market, the users and people like us come to the market and bring these sites back to life. That's what we're good at. But the changes we've requested today and most particularly dealing with the liability and separation of polluters and





non-polluters is probably the most critical component of all of this legislation.

I'd be pleased to answer any questions you may have.

**The Chair:** Actually, we've gone over time. I indulged you an extra couple of minutes there. But we appreciate very much the points you've brought to us and the very detailed recommendations you've presented.

1530

#### ONTARIO COMMUNITY NEWSPAPER ASSOCIATION

**The Chair:** Our next presentation will be from the Ontario Community Newspaper Association. Good afternoon. Welcome to the committee.

**Mr Fred Heidman:** Good afternoon. My name is Fred Heidman. I'm the first vice-president of the Ontario Community Newspaper Association, the OCNA. With me is Don Lamont. He's the executive director of the OCNA. I'm also the publisher of the Parry Sound North Star. Thank you for giving us the time to be here today.

We'd like to thank you for the opportunity of participating in these hearings today regarding Bill 90, which establishes Waste Diversion Ontario. The OCNA, or the Ontario Community Newspaper Association, supports Ontario's commitment on its endeavour for long-term sustainability of the blue box program. Part of our position to get where we are and help out with this program—sorry, I'm getting ahead of myself. That's the part where Don will be bringing recommendations to you later.

Our association is made up of 262 members serving both urban and rural communities, both large and small, throughout Ontario. Our research has indicated that 67% of the adult English population in Ontario served by these community newspapers bring a readership of over five million to Ontario every week. About 44% of our titles have circulations of under 3,500 and 73% of these are in tabloid format, which are much smaller physically in size—less weight—and approximately 76% of our members publish weekly.

Our community newspapers play a unique role in Ontario. As a communications medium—small and large—they bring education to the public about the need to recycle and encourage Ontarians to meet recycling targets. Community newspapers are an integral part of community life. More than business, we are the local voice of the community. Our members are the community's communications centre, an integral part of almost every city, town and village, and we help to build these communities and give them their identity and their spirit.

Community newspapers have already voluntarily contributed \$300,000 in unpaid advertising to the original WDO program, and we propose to continue supporting this program through unpaid advertising and editorial messages toward this education program to the public. This important contribution was within our means and generously reflects the cost of collecting and processing

newsprint, its resale value and the relative volume of old newspapers our readers put in the blue box.

At this point, I'll turn it over to Don, who will bring you our recommendations.

**Mr Don Lamont:** Essentially we have six recommendations. Before we get to those, we'd like to applaud certain sections of the act that we think are very critical and important to the success of the program. We applaud the fact that the act specifically empowers the WDO and IFO to enhance public awareness and to promote participation in waste diversion. Our industry feels that public education is the key to conservation and waste diversion and, of course, we're a medium to help you carry that communication message.

The first recommendation we have is that we would encourage the government to set out a framework for the WDO and the IFOs to use to determine the share of costs to be assigned to various materials in the blue box. We propose that you consider accepting the municipal recycling collection cost model. It's a model that helps assign costs of various materials and, indeed, it was developed in consultation with the Ministry of the Environment.

Elsewhere in the act it's noted that there would be a responsibility for WDO to deal with disputes and to resolve disputes regarding what contributions would come from various industries. We feel that if the ministry were to specify or provide that framework, it would certainly reduce those numbers of disputes. There's been quite a bit of a discussion before about weight and volume and how that contributes to costs, so I think the ministry providing that tool would be very helpful to industry to help us sort out shares.

The key point here is that because of our visibility, community newspapers are concerned that we would be asked to perhaps pay more than what our fair share would be, particularly when one understands that the cost of collecting and processing newsprint, given the resale value of that, is probably in Ontario worth about \$1.2 million to \$1.3 million. Even though newsprint has a considerable share of the weight in the system, if you looked at fair costing methods, the tab would be somewhere around \$1.2 million to \$1.3 million for all the newspaper that's in there.

We encourage you not to consider the material-based approach that is now being proposed to distribute costs to municipalities, which are the subsidies that municipalities would receive. We feel that model is appropriate for municipalities but it's not appropriate for industries. I think the municipal representatives in the consultation that developed that model would agree with that. I think that material-based model doesn't take into account all the factors that go into collection costs and how the collection process really takes place. In fact, it simply looks at the materials that are in there and assigns a flat share of costs to that and, again, it's not appropriate.

There are six sections of the act that we also want to point out to you that really work together to determine what contributions would be contributed by various

industries, and they're referenced in the report that we've given you. But flowing from that, we would propose recommendation 2 and it deals with the matter of exemptions. We would encourage that the act specify where exemptions in fact will be provided. The notion is that there are certain instances where it's appropriate to exempt people. The provision is in the act, but it doesn't say at the moment what the circumstances would be. I think that the WDO and the IFO would require some direction as to how to interpret that. I think the intent here would be that those exemptions would be provided to avert undue hardship, financial and otherwise, to companies and to communities. Also, it perhaps would apply to small-scale operations, where it's not reasonably administratively efficient to solicit or secure a contribution. So we ask that direction be given in the act to the WDO by way of clarifying who they would apply to.

The other thing is that we feel that once we know the circumstance, it would be helpful to say what is the instance or where do they apply more specifically; for example, what the threshold would be, let's say, of financial sales or whatever it might be for a corporation or a business. So again there's that framework, that direction provided to WDO to determine specific instances where that hardship is incurred, some direct guidelines.

We feel that when exemptions are considered in the case of community newspapers, we should look at exemptions on an individual newspaper basis—we call it a title basis—and not necessarily look at the whole entity or the business where, for example, there may be one or more community newspapers owned by a business. We feel it's appropriate to look at it one community at a time, because what you might do otherwise is put a financial liability or a burden on a publication. In our industry sometimes there are precarious situations as to how viable a paper might be. The economic base of a town may be affected or there are other instances. So to incur a liability in a paper might just be enough to tip the balance and what you find is that it's no longer viable and the community is without a newspaper. As Fred has indicated, as the communications centre for a community, what you do is you limit the ability of people in that community's ability to talk to one another or people from the outside world to come and deliver messages to that town. So we really would hope that we would look at exemptions on an individual title basis.

The key here, again, is that most of our members are grassroots, small business people who are simply not in a position financially to assume major cash donations. In the case of newspapers, community newspapers in particular, because newsprint is an international commodity, we're not able to pass that cost along to anybody else as the brand owner. Since a number of our newspapers are free-distribution newspapers, in terms of the customer being the reader, there is no capacity there to pass that cost on by increasing a subscription fee.

1540

We would also, in recommendation 5, recommend that a specific section of the act direct municipalities to

maximize their efficiencies and provide for some sort of reasonable limits on the contributions that might be forthcoming from industry. I think it's understandable that as an industry we would be concerned that we may be asked to pay for some of the inefficiencies that are in the system.

Also, the act simply places no boundaries on what municipalities can spend. For example, larger MRFs—material recovery facilities—would make recycling in Ontario more efficient. We understand that adding, say, nine or 10 ONP machines that kind of shake out materials in the process would significantly decrease the sorting costs, which are substantial. I guess what we're saying here is that it's only reasonable that if someone is asked to share the responsibility, there's a mechanism to govern those costs, and that efficiency be maximized. I believe it is the intent of all the players in the system to do that. We feel it's important also to reflect that in the act.

There are some sections also that speak to the industries that would contribute to the program. We would encourage that the act instruct WDO, in the appropriate sections, to take an inclusive approach, and in practice to ensure that all industries contributing material to the blue box are covered under the legislation. For example, community newspapers or daily newspapers are not the only source of newsprint in the blue box. We've both been active in the consultations that have been underway and have been at the table, but I think it's important to note that there are other materials that arrive in the blue box—directories and magazines and other publications that are printed on newsprint. So we encourage a very inclusive approach in bringing all parties who are involved to the table in practice.

**Mr Heidman:** Community newspapers make a valuable contribution and we will continue to act as stewards to do our part to advance our common goals. We intend to continue to voluntarily make a fair, reasonable and affordable contribution of unpaid advertising—as we have in the past—to this program, which represents a significant contribution to the promotion of recycling our material. Unpaid advertising has a real value in the marketplace. Newspapers incur a cost when they produce this advertising, and this contribution will help WDO meet one of its key responsibilities of communicating and getting the message out to the people.

On behalf of the OCNA, Don and myself, I would like to thank you for the opportunity of speaking with you today, and my apologies for stumbling through it; it's the first time I've tried this. If there are any questions, please ask.

**The Chair:** We've got time for about one and a half minutes per caucus, and this time we'll start with Mr Marchese.

**Mr Marchese:** On page 2, you talked about, "We are concerned that industry will be asked to pay for generally acknowledged inefficiencies in municipal recycling." What are those generally acknowledged inefficiencies?

**Mr Lamont:** I think if we looked at things from a systematic viewpoint, looking at Ontario as a whole, which I think this act encourages us to do, bigger materials recovery facilities would be more efficient. I know there are costs involved in making those facilities efficient. As I indicated earlier, I think some technology has come aboard—screens, for example. Were we able to install those in MRFs and so forth as part of the ongoing process of making operations more efficient, that would have a significant impact on reducing labour and sorting costs.

**The Chair:** Sorry, Mr Marchese.

**Mr Marchese:** That was it?

**The Chair:** Sorry.

**Mr Marchese:** That was a minute and a half?

**The Chair:** That was about three.

**Mr Garfield Dunlop (Simcoe North):** Very quickly, sir, there are a number of Ontario community newspapers. I'm just curious: do you have any idea today how much you recycle percentage-wise? The free dailies come to homes all across the province and quite often they have a lot of supplements or inserts inside them from lumber yards, grocery stores etc. Do you have any idea what kind of percentage today?

**Mr Lamont:** Not of our particular industry, but there are data available that indicate that a higher proportion of newsprint is recycled than other materials in the system. I don't want to quote the number but I believe it's 72% that would be recycled.

Just one point we're making also about flyers is that under the notion of the brand owner, technically flyers in most instances wouldn't be the responsibility of a newspaper because they're printed by other people. They're called pre-printed inserts and branded. So it would be the company that produced those that would be responsible for a contribution for those materials.

**Mr Bradley:** I notice you made a virtue, and justifiably so, I must say, of free advertising which you allow for the purpose of promoting recycling. Would you like to have that considered as part of your contribution? When there's an assessment against each of the sectors, do you think it would be fair that the free advertising you provide would be counted as part of your contribution?

**Mr Lamont:** We look at it as perhaps what our contribution would be in total, because of how important public education is. Now that it's mandated that that be done, I think our industry, for example, would be able to deliver messages to all parts of Ontario, basically every nook and cranny throughout the province. Because of our history and the type of vehicles that we are, people know that it's a credible message from us. We have publishers who would be promoting recycling who have done so all along. It's just part of what we feel we need to do as a responsible member of the community.

**Mr Heidman:** The word "free" unfortunately is one that may be taken too freely. There is a cost to the newspapers to produce this ad and there is a value to that space, that it's there. So "free" isn't a good description of it.

**The Chair:** Thank you very much. We appreciate your taking the time to come make a presentation before us today.

## RECHARGEABLE BATTERY RECYCLING CORP OF CANADA

**The Chair:** Our next presentation will be from the Rechargeable Battery Recycling Corp of Canada. Good afternoon and welcome to the committee. Please proceed.

**Mr Frank Zechner:** My name is Frank Zechner and I am legal counsel for the Rechargeable Battery Recycling Corp of Canada. The Rechargeable Battery Recycling Corp of Canada is a non-profit, industry-sponsored product stewardship program that collects and recycles rechargeable batteries. RBRC of Canada is very supportive of Bill 90 and the Ministry of the Environment's efforts and supports related to waste diversion in general. RBRC of Canada acknowledges that the Ministry of the Environment of Ontario, together with Transport Canada, has been vitally important in establishing and continuing RBRC of Canada's Charge Up to Recycle program in Ontario.

Our overall objective today is to express our support for Bill 90 and the Ministry of the Environment of Ontario and to obtain Ontario's recognition of the RBRC of Canada program. The RBRC of Canada's Charge Up to Recycle program is diverting rechargeable batteries at no cost to Ontario residents, at no cost to municipalities and at no cost to the province of Ontario. Susan Antler, to my right, is the coordinator of the Canadian Charge Up to Recycle program and will provide you with an overview of the RBRC of Canada program in Ontario and throughout Canada. Following her presentation, I would like to highlight some elements of RBRC's submission which is contained in the green folders that have been circulated to you.

Without further delay, I'd like to introduce Susan Antler.

1550

**Ms Susan Antler:** Mr Marchese asked if I wasn't here before, and I was, in another capacity. Both Rosario and I are ex-Harbord grads. Inner-city kids have to get along on many fronts, so—

**Mr Bradley:** Did you say "Harvard" or "Harbord"?

**Ms Antler:** We're Harbord Collegiate graduates.

I guess my role is to express the support of the Rechargeable Battery Recycling Corp and the 300-plus members of the industry who financially support the program. The packages that you have give you a highlight of the extensiveness of the program. Without the Ontario Ministry of the Environment's support, we would not have launched this program nationally. It happened in September 1997. One of your colleagues, the Honourable Mr Sterling, supported the launch of this program at the Canadian Tire store. This program is harmonized across Canada as well as the United States. We now have over 5,000 retailers who are participating in the program, such as Canadian Tire, Radio Shack and

Home Hardware, and in a couple of weeks we will have containers at all the Home Depot stores across Canada.

This is financially supported by the industry. We do not look for any government support except that we ask for support in terms of allowing us to efficiently collect the rechargeable batteries. In doing so, it is the kind of support that we got from Keith West and his team in terms of government approval to use public carriers as opposed to doing hazardous manifests.

We have programs for retailers and municipalities as well as businesses. If you are a retailer, a Home Hardware store, and you've signed up with the program, you get a tracking number so that you have a personal liaison with the RBRC. You would receive this box couriered to you. In this box are two battery collection kits. We have videos that train the store clerks and we have ongoing relationships with the head office. Your store clerks would put this up in a spot in the store that's probably behind the counter so that it doesn't become a collection box for gum and the like. The retailer is a very good place for the collection of rechargeable batteries, because usually you don't buy them that often; they're an excellent example of reuse. Eventually they do wear out, and you want to make sure you get the right one for your equipment, so you go back to your retail store. We have the support of the huge retailers across Canada.

What happens is that you would bring in your used rechargeable battery. The store clerk would then do this much more elegantly than I am. He would take the rechargeable battery, put it in this plastic Baggie, fold it and put it in the box. At the end, once it's full, this box becomes your shipping container. The store clerk calls Purolator, similar to what a courier document package would be, and because of the support we have from the MOE as well as all your provincial colleagues across Canada and Transport Canada, this can be just a regular courier shipment. It then goes to Fort Erie, Ontario, and gets consolidated with many boxes from across the country as well as those we receive from municipalities and the businesses that can participate in this program. Then it gets manifested across the border and it's recycled at INMETCO, which is a division of Inco located in Pennsylvania.

All of this is paid for by the RBRC member companies. Over 90% of the industry participates on a voluntary basis in this program. In addition to the costs that are associated with this that the industry pays for and manages, we have a very extensive education and promotion program. Richard Karn, who you see in the front of this brochure that explains the program, is our international spokesperson. Mr Guy Lafleur has helped us in terms of French Canada. We have an extensive amount of material in terms of public service announcements. A copy of the TV PSA featuring Mr Karn is included in your documents. Radio has been very supportive of our message. As well, we have a lot of effort in terms of public relations.

Any time you would like to do something in your particular constituencies to promote the program, give

me a call, and we have staff to make sure that happens. Stratford asked for that to happen, and we did a Bay in Stratford in terms of the program. We had an event at the mall with their local retailers who are participating in the program. We sponsored a luncheon for their local environmental committee, and we were fortunate to get press in terms of the Stratford Beacon Herald. So the objective is for us to get awareness of the program.

A similar type of program exists for businesses. They have to pay, but that's also their responsibility, to pay their way. It's a very efficient program. Municipalities can participate in this program free of charge. We have done work with Guelph, Toronto and Ottawa. We were recently at the AMO conference, the Association of Municipalities of Ontario, and the OSUM folks—that's the Ontario Small Urban Municipalities, the board of directors—were very supportive of the program. We also had the staff from AMO at our meeting, and we intend to do a very strong push.

The opportunity is for us to build this program, because we already have what you want. Specifically, we have all of the industry already paying. It is a harmonized program, North American, which allows for efficiencies, and the opportunity for us is to just get stronger.

**Mr Zechner:** Overall, RBRC of Canada is very supportive of the objectives of Bill 90. Our concern is that, number one, the supporters of the RBRC program, under certain circumstances—depending on how the act is implemented, what regulations are passed and what policies are adopted—may be duplicated in some respects by a separate provincial stand-alone agency.

Right now there are steward obligations in the act that require the payment by stewards of certain fees, require stewards to maintain certain records and require stewards to submit reports. The supporters of the RBRC program, some 300 separate manufacturing corporations, are already supporting this program. If they are asked to divert further funds and more administrative effort to comply with a yet-to-be-established government program, there are going to be inefficiencies and something will likely fall between the cracks.

RBRC of Canada is most concerned that this program that has already been established and has been functioning strongly since 1997 be allowed to continue to grow and prosper, both in Ontario and across Canada. We have as an example the RBRC program in the United States, which has a magnitude of approximately 10-fold of what the Canadian program has achieved, and again they have a separate regulatory regime that allows them to move their batteries without the hazardous waste manifest and protocols. But overall, RBRC of Canada is concerned that the provisions of WDO may duplicate and frustrate the already ongoing program by RBRC of Canada.

Secondly, there is an issue in terms of recognition of the program. RBRC of Canada would like to be recognized at the outset, when the legislation is passed, as an existing, fully functioning program for diverting rechargeable batteries. This is not the case, and there is no provision in the act to allow that to happen.

RBRC of Canada is already operating. They operate through thousands of retailers across the province and many more thousands across the country. We have support from 90% of the industry by payment of fees to RBRC of Canada to operate this program. No fees are being sought from Ontario residents or municipalities, nor from the government, but there is no mechanism in the Waste Diversion Act as it currently stands to recognize this program at the outset. What has to happen in the way this legislation is rolled out is that the province virtually has to establish an identical program through the establishment of an IFO and then, and only then, can private industry apply for approval of its program. We feel this is not the situation that Ontario residents would support or that the legislative committee would endorse. We feel we have a proven, positive, cost-free program that should be allowed to continue.

I'd like to stop at that and pause for any questions that any distinguished members here may have.

**The Chair:** You have given us about two minutes for each caucus. This time I think we're starting with Mr Miller.

1600

**Mr Miller:** Thank you for your presentation. I must admit yesterday I changed the battery in my camera, and I set it on the counter and thought, "OK, what do I do with this now?" Because I think there are an awful lot of batteries that do end up in the garbage, it's still sitting on my counter. In my own case we save one little blue box and put batteries in it the whole year, and then we basically give it to the municipality; that's about once a year. But I certainly have the feeling that the great majority of people probably just toss them in the garbage, and it's something where we have to strive to get batteries out of landfill sites for sure.

Do you have any idea what sort of participation rate you have at this time? It would be my feeling it's the exceptional person who's probably taking part in a program right now and not the average person, who's not going to go the extra mile to make a point of recycling batteries.

**Mr Zechner:** I'm going to defer to Susan on that.

**Ms Antler:** Your staff at the ministry has asked us that. They're very supportive of the program as well.

We have done some infrastructure changes to the program that allows for automatic replenishment of the boxes over the last while. I can give you numbers as we stand. In April of 2001 we collected just under 9,000 pounds of rechargeable batteries. In May we went up to 11,000, and by July we were up to just over 24,000 pounds. So we're on a growth spurt, and the objective for us is to make sure all the engines are firing. So we have the retailers involved, we have a very sound infrastructure collection, and the awareness program is where we're at right now.

So we still have a good opportunity to continue to grow. It is a voluntary program. If there is a way that you would like to mandate your residents to participate in the program, that would be terrific, because it exists. So one

of the objectives for us is to continue to build the awareness.

**Mr Bradley:** This is a technical question from a layperson, so that's how you always preamble these. Once the battery has been recharged—you say up to 1,000 times or something—and then it's no longer usable, what specifically happens to it when it gets to you?

**Ms Antler:** What happens to it? It just doesn't hold a charge.

**Mr Bradley:** So what do you do with it then?

**Ms Antler:** Then what you do is, you want to buy a new one because you want your power tool or your—

**Mr Bradley:** But what do you do with it?

**Ms Antler:** Oh, what do we do with it? It goes to INMETCO, which is a division of Inco. It's a recycling facility. It goes through a high-heat process and the cadmium and the nickel get separated. The nickel is then reused in stainless steel and the cadmium is then put on the spot market for the sale of cadmium for new batteries and other things.

**Mr Bradley:** That's precisely the part I was looking for out of that. So you do that.

**Ms Antler:** Yes. And the US EPA does audits, as do we, of the facility. We're quite thrilled from a Canadian perspective that INMETCO is a Canadian company.

**Mr Bradley:** Do you ever have trouble with leakage, because I heard you say Keith West allowed you to not have this declared a hazardous waste so you could just ship it in a box like that with Purolator. Do you have any problems with leakage at all?

**Ms Antler:** Leakage in terms of them not showing up or in terms of—

**Mr Bradley:** Of anything leaking out of the battery.

**Ms Antler:** Huge precautions; extraordinary precautions. Again, the Baggies. When we first started this program—would you like one?

**Mr Marchese:** No. I was going to ask about that.

**Ms Antler:** It was just like a lunch bag Baggie and it didn't have any branding, so it could be used by someone else in terms of lunch or whatever. So what we did was brand it, and we're very strongly focused on making sure the safety instructions are well understood by the store clerks and the businesses in the communities that participate.

**Mr Marchese:** This is the question I was going to ask: why put it in a plastic bag? It seemed like another additional wasteful thing, but obviously it protects—

**Ms Antler:** Again, you want to go the extra mile so that there are no issues associated with it. It's just making sure that we're being safe and sound.

**Mr Marchese:** So you collect rechargeable batteries and those batteries that are not rechargeable as well?

**Ms Antler:** No. It's focused on rechargeable batteries.

**Mr Marchese:** Right. Some people would know, I suppose, but I suspect that a lot of people would just bring any battery in, right?

**Ms Antler:** The store clerks are instructed to make sure they're focused on rechargeable batteries, because

that's who pays for this program: the rechargeable power industry.

What was very interesting: we first started off this program with nicads, nickel cadmium batteries, and we focused this whole program because of the toxicity of these specific batteries in terms of the whole array of different types of batteries. In 1997 we focused on nicads. We've now expanded to be all-rechargeable, which allows for an easier message, as opposed to saying just nickel-cadmium. That's kind of hard to explain, but if you say it's rechargeable, it's recyclable, it's an easier message for people to get.

**Mr Marchese:** And all the other batteries that are not rechargeable: my assumption is that they are just thrown in the garbage. Isn't that probably the case?

**Ms Antler:** It depends on the community; it depends on their attitude.

**Mr Marchese:** I think there is very little education with respect to those batteries, batteries in general in terms of reuse, rechargeable, and disposing of them in a place where they get separated so that they don't just go into a waste dump.

**Ms Antler:** If you would like, I can certainly defer to the Canadian Household Battery Association to send you some information about that.

**Mr Marchese:** It's obviously a very good program, and I think education is key. It's key with everything we're doing; not just with this but with everything. Does your educational program get into the schools?

**Ms Antler:** Yes, we have a battery education program with schools. In fact, we tested it in Durham with Judy Gould, who is the environmental coordinator for the region of Durham. We actually had Richard Karn up here, I guess a year ago, at the Ontario Science Centre to reward the students. That's on our Web site. One of the things I didn't mention is that we have an extensive Web site: [rbrc.org](http://rbrc.org). I guess the issue is that we also have staff on hand. If you want any support for your local constituency, we're here to help.

**The Chair:** Thank you very much. Always keen to help on education, Mr Marchese—there is in fact a receptacle downstairs, outside—

**Mr Marchese:** I have used it

**The Chair:** Excellent. I save mine up and bring them in too.

Thank you very much, folks, for bringing your perspective before us here today.

#### STEWART SUTTER

**The Chair:** Our next presenter will be Mr Stewart Sutter. Good afternoon and welcome to the committee. Just a reminder: we have 10 minutes for your presentation this afternoon.

**Mr Stewart Sutter:** Thank you, Mr Chair. The reason I came here today was that currently I am on a committee back in Ottawa where we're trying to get the Trail Road landfill site extended beyond its current usage to 2008. The engineers working on it are trying to decide whether

to go laterally or vertically, but they are still using the old system, putting leachate beds and one thing and another and that's it. But that's not the way to go.

The only thing we should be disposing of is toxic waste, which I understand in this province is very well handled right now. We must get back to diverting and recycling the products there in the way they should be but we've got to do it sensibly.

I looked into, for the sake of argument—for years we've been recycling glass bottles. I remember the days—let's go back 60 years—when beer bottles were routinely turned in to the outlets and they paid five cents, or 60 cents a case. The increase since then has only been by 100%. However, the contents at one time used to be about 16 cents. Now they're up to \$1.25.

It's just not worth recycling glass bottles and jars. The fact is that the basic component used in manufacturing glass, which is silicon dioxide, is very plentiful. It's readily available all throughout the world. It's cheaper to manufacture that. As far as glass bottles and jars are concerned, they're better off being ground down into fine particles and used for fill for various depressed areas and perhaps even as a sub-base for a roadbed.

#### 1610

The same thing of course applies now, where for years we've been saving newspapers. Yes, we'd put them out, we'd bundle them up and they'd pick them up. I know even locally where I live in Ottawa, across the river there are many plants that manufacture paper. It goes back to some of these plants. They have to add chemicals, and this effluent flows into waterways. It's just not worth it. Our inventory of trees right now in Canada is at the highest point it's ever been in our history, so we have no shortage of trees. It makes more sense to take these newspapers and compost them.

This leads into the next subject here, something I worked on many years ago with an outfit called Agripost in Florida—they tried to introduce this process into Canada but nobody seemed interested—and that is, we should be recycling our organic waste by composting it. What do we do now? We put it in green garbage bags and it's hauled out to the site. It will be there a thousand years from now. It will never break down. We should be putting this into biodegradable paper bags and sending it to the composting plant, where it is broken down, mixed with other items, and within 28 days we'd get good, black compost.

The beautiful part is that we receive something back from this. Years ago I was on a committee in the city of Ottawa—I'm talking about the original city of Ottawa—and our group came up with the idea of recycling yard waste and leaves. Since then they've been picked up on a regular basis. They are composted and every spring they put these products out for sale. You can buy them by the bag or by the load. There's no waste. People are getting the benefit of this. If we did this with organic waste, including the paper I'm talking about here, we would recognize something coming back. It would go back as part of our cost of recycling.

The de-inking of newsprint is no longer viable. It's in the write-up I've given here.

In this part of the world we certainly don't need to ever think again about sending garbage by train up to Kirkland Lake or trucking it to Michigan. This doesn't make sense. There are so many ways that we can do things.

The other thing I wanted to bring up is the fact that there's a lot of miscellaneous waste. I live in an apartment building. This morning when I left there, outside at the back there were used sofas, chairs, mattresses. Where are they going to end up? Landfill. Currently in Ottawa, at least, and I'm sure in this area too, there are groups that pick up what we call white goods—appliances, in other words. They will take them apart, use the parts, and the rest goes to be broken down as steel. That's as it should be. But a lot of these other components can go to a workshop. They can take off the metal parts, which go into the metal bin. The rest can be broken up and, there again, the small components go to where they are composted with other products. There's no need to send this kind of stuff to landfill.

It's about time we took this approach. Let's go ahead and let's do it, and we are going to be the winners in the long run.

If you have any questions, I'll certainly take them.

**The Chair:** We've got time for a quick question or two from each caucus. This time we'll be starting with Mr Marchese.

**Mr Marchese:** Mr Sutter, what did you do for a living?

**Mr Sutter:** I spent my lifetime as a transportation consultant in international trade.

**Mr Marchese:** With respect to the last point you made about beds and other materials that could be taken apart and reused, how would we deal with that? Would the city take these things, bring them to a site and the city workers would then take it apart? Is that what would happen?

**Mr Sutter:** That's right, which of course increases employment, too. That's the nice part about it.

**Mr Marchese:** And that would apply to beds and it would apply to any appliance?

**Mr Sutter:** That's right. It gives people jobs.

**Mr Marchese:** The appliances, where people don't take them from the streets and do it themselves, city workers would do that, too, and then find a way to sell them or to —

**Mr Sutter:** Yes. I don't know how you do it in the Toronto area, but in Ottawa there is an outfit that will come and pick up what we call white goods. You phone them and they will come and pick them up, and then they in turn take them apart and salvage parts. The rest goes, of course, to the scrap dealer, and from there it's broken down and made into steel again.

**Mr Arnott:** Mr Sutter, thanks for coming in. Did you make a special trip from Ottawa today to see us?

**Mr Sutter:** Yes. It's always a pleasure to come down and do things. I've done it before and I'll do it again. Just one more thing. I want to say this: a few years ago, there was an outfit called Trimtech. They wanted to build an incinerator on the Toronto waterfront—burn garbage, in other words. I made a submission and did a lot of research into that and came down to appear before the Environmental Assessment Board. They turned it down, and I'm glad they turned it down. You don't need that kind of pollution here.

**Mr Arnott:** It shows what one person can do.

**Mr Sutter:** Absolutely.

**The Chair:** Thank you very much, Mr Sutter. We truly appreciate your taking the time and the initiative to drive all the way down and speak to us here today. Thank you for your comments.

**Mr Sutter:** You bet.

**The Chair:** Our final presentation of the afternoon will be from the Ontario Bar Association, environmental law section. Is there anyone in attendance from that group?

*Interjection.*

**The Chair:** That's correct. So the clerk is—

**Mr Marchese:** You mentioned the name—oh, I see, the clerk is still checking.

**The Chair:** Perhaps I'd ask the clerk if you'd just check with your office to make sure they haven't called to say they'd be running a couple of minutes late.

We'll just recess the committee for two minutes and if at that point they have not arrived, then I'll adjourn for the day.

*The committee recessed from 1619 to 1623.*

**The Chair:** I'm going call the committee to order simply to indicate that the clerk has said that we haven't seen the people scheduled to present at 4:20, so I'm going to adjourn the meeting until 9 o'clock next Friday morning.

*The committee adjourned at 1624.*

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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Friday 7 September 2001

# Journal des débats (Hansard)

Vendredi 7 septembre 2001

## Standing committee on general government

Brownfields Statute Law  
Amendment Act, 2001

Waste Diversion Act, 2001

## Comité permanent des affaires gouvernementales

Loi de 2001 modifiant des lois  
en ce qui concerne  
les friches contaminées

Loi de 2001 sur le  
réacheminement des déchets

Chair: Steve Gilchrist  
Clerk: Anne Stokes



Président : Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENT

Friday 7 September 2001

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

COMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Vendredi 7 septembre 2001

*The committee met at 0900 in room 151.*BROWNFIELDS STATUTE LAW  
AMENDMENT ACT, 2001LOI DE 2001 MODIFIANT DES LOIS  
EN CE QUI CONCERNE  
LES FRICHES CONTAMINÉES

## WASTE DIVERSION ACT, 2001

LOI DE 2001 SUR LE  
RÉACHEMINEMENT DES DÉCHETS

Consideration of Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters / Projet de loi 56, Loi visant à encourager la revitalisation des terrains contaminés et apportant d'autres modifications se rapportant à des questions environnementales;

Bill 90, An Act to promote the reduction, reuse and recycling of waste / Projet de loi 90, Loi visant à promouvoir la réduction, la réutilisation et le recyclage des déchets.

**The Chair (Mr Steve Gilchrist):** Good morning. I call the committee to order for the second day of hearings on Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters; and on Bill 90, An Act to promote the reduction, reuse and recycling of waste.

URBAN DEVELOPMENT  
INSTITUTE/ONTARIO

**The Chair:** Our first presentation this morning will be from the Urban Development Institute/Ontario. Just a reminder: you have 20 minutes for your presentation.

**Mr Neil Rodgers:** Thank you, Mr Chairman and members of the committee. My name is Neil Rodgers, president of the Urban Development Institute of Ontario. Joining me this morning is Mr Mitchell Fasken, a member of our executive committee, the president of Jannock Properties and a developer of brownfields in the GTA, as well as a member of the brownfields advisory panel, which offered the government several policy and legislative recommendations that in most part are contained within this bill.

Our organization appreciates the opportunity of being allowed to appear before this standing committee on what we consider to be a landmark piece of legislation that has certainly raised the bar and begins to make brownfields an attractive and alternative development opportunity to greenfields.

We are therefore pleased to offer our support to the government bill, a bill that has captured a majority of the recommendations of the joint ministers' brownfields advisory panel, while ensuring that the progressive measures of the bill do not in any way detract from the province's and the public's expectations of public health and safety, environmental management, integrity and enforcement.

UDI believes this bill acknowledges that the provincial government recognizes that brownfields represent substantial promise, as their remediation and redevelopment will foster and facilitate smart growth. This effort also recognizes that the existing regulatory regime needs new thinking in order to attract and foster private sector investment in urban renewal, serving as a catalyst to continuing to stimulate economic growth and job creation.

Given these points, we commend the government for addressing these tough issues. This bill will undoubtedly have its critics, who will suggest the bill has gone too far. However, our organization and other like-minded groups are requesting similar amendments that will truly make this legislation a significant element of the province's land use planning strategy and a made-in-Ontario smart growth initiative.

Since the early 1990s, our organization has worked hard with the Ministry of the Environment and recently with the Ministry of Municipal Affairs and Housing to develop a provincial brownfields strategy. Prior to Bill 56, Ontario lagged well behind most jurisdictions in North America in establishing a dynamic regulatory framework to encourage brownfields. If implemented, Bill 56 will help reduce risks to public health and the environment, renew urban cores, rebuild municipal tax bases and accommodate new population and employment growth.

UDI's efforts as part of this strategy and bill are to establish a level playing field with greenfields development with respect to the regulatory regime by adding certainty and clarity to the process. Notwithstanding many of the positive features of the bill, we feel it still has not addressed several key issues related to liability

and off-site impacts. Liability was the single most important issue the advisory panel set out to resolve and, in our respectful submission, still remains a critical area of concern for UDI and many other stakeholders.

Furthermore, we submit that the issue of liability, and addressing it in a fair and responsible manner, may alone separate this bill from being viewed by other jurisdictions within Canada and North America as being state of the art and establishing Ontario as a leader in brownfields redevelopment.

Clearly the approach taken in this bill is to encourage remediation of contaminated sites while maintaining protection of the environment and the public. However, there are many provisions of the bill that do not uphold the immunity branch of the legislative scheme and accordingly undermine the intent of the act significantly. First, there is no immunity for an innocent purchaser of a property from the date of purchase to the date of issuance of a record of site condition. Second, immunity for the non-polluter is clouded with respect to off-site impacts during and following the cleanup. Third, the immunity is not extended to officers, directors or managers of the corporation conducting the cleanup. And fourth, the Ministry of the Environment's treatment of soil from brownfield sites as waste remains a deterrent.

These regulatory gaps and policy omissions in the protection of immunity continue to threaten the ability of brownfields to be a viable and financially feasible alternative to greenfields. Several progressive changes with respect to the liability issue need to be incorporated through amendments to the bill to create a level playing field.

Foremost, in the opinion of UDI, is our support in legislation and regulation that the polluter-pay principle be upheld. This basic principle is captured in the bill; however, it has not clearly drawn the line. In our opinion, the regulatory regime must distinguish between parties who have caused contamination at a site—the polluter—and those who are innocent purchasers, termed as the non-polluter owner, such as developers who, having no prior legal and operational connection with the site, are interested in the site's future development potential and are prepared to undertake the site's remediation. For these innocent purchasers or parties, protection in addition to immunity from orders is required for off-site contamination.

With respect to civil actions, we believe that changes to the Environmental Protection Act and this bill in defining a polluter and a non-polluter owner will assist in mitigating claims against innocent purchasers.

If this legislation is to have any positive effect in remediating brownfields while meeting the intent of its promise, non-polluter owners require incentives to participate in the investment and remediation of such sites. Such legal conditions precedent should be similar in nature to those afforded to municipalities and financial institutions and particularly need to be greater than the protections made to the polluter.

We have attached appendix 1 of our brief, which recommends among others the following three key recommendations:

UDI recommends that immunity be extended to bona fide, arm's-length purchasers diligently pursuing a record of site condition. Therefore, this bill should define the term "non-polluter owner";

The bill requires a clear statement which indicates that the MOE director will not issue an order from the first day the new owner commences the remediation process to either the date the remediation is complete or the mitigation of impacts off-site is abated. UDI recommends that the bill be amended and impose the same two-year time limit given to municipalities and financial lenders to those parties undertaking a site remediation;

Failing the extension of an exemption period to a non-polluting owner, UDI recommends that the MOE give consideration to establishing a process for a non-polluting owner to obtain a stand-still agreement in order to protect them from liability during the site remediation. This process should be explicitly stated in the bill.

The bill limits protection for administrative orders to the boundaries of the contaminated site. Where off-site impacts occur, the bill provides no encouragement to deal with these impacts in an environmentally responsible manner. Sites having off-site impacts may continue to go abandoned and not be developed due to their continuing liabilities. UDI therefore recommends that the government extend liability protection for off-site impacts to non-polluting owners only, to encourage remediation and redevelopment as well as to mitigate and/or possibly reduce risks to public health and the environment.

#### 0910

Bill 56, in our opinion, does not provide protection against prosecution for a non-polluting owner who enters into a brownfield remediation. UDI therefore recommends that such immunity be provided, particularly to individuals, shareholders, officers, directors or managers of corporations who embark on such brownfield remediations. Furthermore, we recommend that the MOE and other parties would not be able to pursue these individuals personally for the cleanup for environmental matters created by other parties, the polluter(s).

In this regard we have provided and recommended some language that was attached to our submission to the EBR. We believe this change to limit liability actions to the registered owner only would provide corporate comfort to pension funds and other institutional-type investors who today are not prepared to invest in brownfield redevelopment with their current implied risks.

We also wish to bring to the committee's attention the bill's omission to deal with off-site impacts that in turn leaves unresolved the exposure of property owners to civil suits in relation to those off-site impacts. The potential exposure to civil suits is a serious obstacle to redevelopment of such sites. UDI supports the recommendation of the advisory panel that the government clarify liability for property owners for both on-site and

off-site contamination. We therefore recommend that Bill 56 should be amended to reflect this point accordingly.

A key recommendation of the advisory panel, in the opinion of UDI, that remains unaddressed in Bill 56 is the classification of all soil from brownfields as waste under Ontario regulation 347. MOE's treatment of soil as waste will continually be a barrier to cost-effective brownfield remediation where the fill from the brown-field site is used as fill material, while being inconsistent with prevailing public opinion related to the three Rs—reduce, reuse, recycle—provided that public health and safety are always maintained. Thus UDI recommends that the province amend the classification of soil as waste in Ontario regulation 347, to promote recycling and reuse of soils.

Furthermore, the bill does not provide protection from orders under section 43 of the EPA to remove waste and restore a site to a condition satisfactory to the ministry. Clarity and certainty are necessary, and amendments to give effect thereto are strongly encouraged.

In conclusion, Bill 56 represents a significant step forward in encouraging the redevelopment of contaminated sites in Ontario. Our organization will continue to take a proactive approach in offering assistance to the province in any initiatives that will support smart growth for the benefit of all residents of Ontario. As a significant stakeholder, we are committed to advance the vision for brownfield revitalization as illustrated in Bill 56.

In addition to the foregoing, we are especially encouraged to learn that the government is seriously considering the inclusion of a positive statement in the growth management portion of the provincial policy statement to encourage the redevelopment of brownfields.

While the legislation and tools will be in place, municipalities may often require a form of motivation to move forward and accept applications from developers who wish to develop brownfields in their communities. Recognizing the importance of brownfields remediation through the PPS represents a strong signal to assist in achieving these ends.

The combination of the proposed changes to the provincial policy statement and the recommended amendments to this bill will establish Ontario as a leading jurisdiction in North America for brownfields redevelopment and send a positive signal to the development community, pension funds, institutional investors and municipalities that brownfields can be a very attractive investment and development opportunity.

Given the substantial promise in addressing many issues currently in the public domain through this bill, this committee and the government must consider the sentiment and recommendations of a broad cross-section of stakeholders and seriously consider amendments to the bill with respect to liability.

We want to thank the committee for listening to our presentation, and we would be happy to answer any questions if there are any.

**The Chair:** That leaves just over two minutes per caucus, and we'll start with the official opposition.

**Mr James J. Bradley (St Catharines):** The question of liability, of course, has always been the number one problem that people who want to develop lands have brought to the attention of members of the Legislature. I noticed that Dianne Saxe wrote an article in the *Toronto Star* some time ago, describing her concerns about the bill, that it didn't go far enough. On the other hand, you have some municipalities that are afraid they're somehow going to be left with some liability and the ball gets passed around from place to place.

What changes do you think would be necessary, in terms of the criteria that presently apply to the cleanup of lands, that would be useful? They're fairly stringent at the present time. I've had that in my municipality. Everybody here has had a problem within their own municipality. What specific changes in the criteria would you say would be helpful?

**Mr Rodgers:** I'd like to turn the question over to Mitchell Fasken to answer.

**Mr Mitchell Fasken:** We're not actually looking for any changes whatsoever in the criteria. We believe the criteria established by the Ministry of the Environment promote the safe reuse of sites for public health. The issue is not so much the criteria; it's the application of the criteria, the utilization of site-specific risk assessments. The municipalities have raised issues in the past concerning their liability. Much of those are clarified through this bill by ensuring that the obligations of parties to conduct cleanups and their required works—the test they must meet and the municipalities' responsibility in the approval process is clarified through Bill 56. So I believe the issue of the municipalities' concern about liability is strongly addressed. But we're not looking for changes to the standards, to the cleanup criteria. We can work within that within the industry. It's more the phantom liability risk that is the impediment we deal with with municipalities, their concern that issuing an approval puts them in a liability stream. We don't believe it does.

We feel that Bill 56 currently addresses those issues substantially. There are exceptions where the municipality takes ownership of a site, but that's a very different issue. If we deal with non-polluting owners, then a municipality is a non-polluting owner; they're not the polluter. So I think this extra piece helps us address that factor.

**Mr Rosario Marchese (Trinity-Spadina):** Thank you both for your remarks. You mentioned earlier on, Mr Rodgers, that there are some critics who say this bill perhaps has gone too far. Who are those critics? What do they say?

**Mr Rodgers:** I think it gets back to the issue of liability. Exactly what Mr Fasken just said, the perception that they haven't read the bill entirely and understood all the concepts and all the initiatives the bill is offering. I think there will always be, from the municipal sector, from some environmental-based groups, "Are the public health and safety risks still out there?" We're confident, and I think the drafters of the bill have been very careful in

never exposing the public to risks that are in practice today.

**Mr Marchese:** OK. To what extent is the off-site impact to non-polluting owners—what will the impact of that be? Will it prevent people from actually involving themselves in the cleanup? “UDI recommends that the government extend liability protection for off-site impacts to non-polluting owners.” To what extent will that limit people from getting involved if that isn’t put in as a change?

**Mr Fasken:** I don’t think it will limit a party’s ability to get involved. Where you’re dealing with contamination that’s off-site, the site-specific risk assessment process and the cleanup criteria are used. One of the tests for a successful site-specific risk assessment and/or cleanup is that there is public involvement and there is involvement from other parties. The issue really comes to the point of saying, where you have sites that have significant off-site impact and the polluting owner has gone bankrupt and disappeared, do you let the site sit dormant and do nothing, or do you say to someone, “If you’re able to clean up the site, clean up the source of the contamination, do what you can for off-site impact. You may not be able to clean up the off-site impact to where it should be perfect, but you’re responsible to do as much as you can”?

Otherwise, with many of these sites, nothing will happen. We see that in many cases in Toronto, Kitchener-Waterloo and Hamilton, sites where people have simply thrown up their hands because the cost to deal with that broad a problem far outweighs the value of the site. So you must stop the source of the contamination and ensure that you’ve done whatever is reasonably possible.

0920

**Mr Morley Kells (Etobicoke-Lakeshore):** I have basically a minor question. I’m not trying to deal with semantics, but you talk about soil and you don’t want the soil all to be considered waste. So what is it? Is half of it fill material? When it’s not waste, is it fill material?

**Mr Fasken:** Some years ago we did extensive work with the Ministry of the Environment on reclassification of waste in reg 347. Through that, there were a number of recommendations that would allow you to use soils from a contaminated site that were deemed to meet certain criteria, reuse them on other sites within the urban area. Today, unless it’s inert fill, which is soil that you’d find out in the middle of a farm field that’s never been used or never been touched, you really can’t reuse it on a site. There are very stringent guidelines, and what it forces you to do in many cases is that soil that could be otherwise reused safely within either an urban residential site or an urban industrial site ends up going to the landfill site.

The issue is allowing flexibility in using soils within urban areas and properly using the criteria. The MOE has made great strides on that. It just has never moved forward in regulation, and we’d like to use this bill to help advance that thought.

**Mr Kells:** So is the answer that there are different categories of soil?

**Mr Fasken:** Exactly. There are different categories today.

**Mr Kells:** Is the challenge for MOE to come up with the categories they can live with?

**Mr Fasken:** They already have the categories in place.

**Mr Kells:** They just haven’t changed the reg?

**Mr Fasken:** Today, if it doesn’t meet that category—

**Mr Kells:** It sounds like Catch-22.

**Mr Fasken:** They’re prepared to deal with it.

**Mr Kells:** I see, OK. They’re prepared to deal with that. No further questions.

**The Chair:** Thank you for your presentation before us today.

## TORONTO BOARD OF TRADE

**The Chair:** Our next presentation will be from the Toronto Board of Trade. Good morning, and welcome to the committee.

**Ms Elyse Allan:** Good morning. My name is Elyse Allan and, as noted, I’m president and CEO of the Toronto Board of Trade. I would like to thank the standing committee on general government for this opportunity to speak on Bill 56, the Brownfields Statute Law Amendment Act.

First, the board would certainly like to congratulate the government for the introduction of Bill 56, as it will result in substantial public benefits for the residents of Ontario.

Bill 56 can and must be a catalyst for urban renewal. The facilitation of brownfields redevelopment was one of the key components of the board’s recommended smart growth strategy. As cities mature, redeveloping brownfields sites will allow urban areas to accommodate growth through higher density development, without increasing their boundaries that result in urban sprawl. They also create mixed-use neighbourhoods, provide a variety of transportation options, generate tax revenues and of course take advantage of existing infrastructure.

Many communities in urban areas are working to restore the vitality of their downtown cores through developing vacant or underused land and buildings. In Toronto alone approximately 860 acres, almost 30% of all industrial employment areas, are brownfields sites. The city estimates that over 400 acres of this land are suitable for residential, commercial and industrial redevelopment. Industry is an important component of the city’s overall tax revenues and an important aspect of the city’s strategy to attract new business and promote economic development.

By removing key impediments to redevelopment of brownfields sites, including environmental liability and cleanup requirements, this legislation offers the potential for new jobs, business expansion, and ultimately a more vibrant Toronto.

In November 2000, the provincially mandated brownfields advisory panel released its summary of advice to the Minister of Municipal Affairs and Housing, to the Minister of the Environment and to the Minister of Economic Development and Trade. As a participant on the panel, the Toronto Board of Trade is pleased that many of the recommendations are contained in Bill 56. However, we do feel that improvements can be made in three key areas to ensure the legislation is even more attractive for those who are willing to take the risk of cleaning up brownfields sites. This would involve amendments to three areas: environmental liability, financing and the planning process.

Despite the tremendous benefits to be gained from developing brownfields, financial institutions and developers are often reluctant to invest in these sites because of the potential financial liability resulting from future environmental problems. The board is concerned that Bill 56 does not extend protection from ministry orders to any party that remediates contamination on adjacent properties. One of the key recommendations supported by the board on the brownfields advisory panel is that the non-polluting owners should be required to stop any off-site migration of contaminants but should not be responsible for off-site contamination that has left the site prior to its purchase by the non-polluter. The board believes that this is a key requirement to attract investment for brownfields sites. In order to address off-site liability concerns Bill 56 must first provide clarity for those who are liable for off-site contamination and include a protection window for persons who do not cause or permit contamination to migrate off-site.

In addition, the proposed amendments to the Environmental Protection Act do not include protection for innocent purchasers or for officers and directors of corporations that might get involved in these brownfields. The board recommends that the legislation provide protection against prosecution for a party who enters into brownfields remediation, and be able to provide protection from prosecution to individuals, lenders, shareholders, officers, directors and managers of corporations that undertake the remediation of these brownfields sites.

Another key ingredient to encourage brownfields redevelopment is funding. Although Bill 56 enables municipalities to provide incentives in the form of municipal tax relief, there are no provisions for provincial financial support.

In Michigan, the state used its legislation to raise the maximum single business tax credit on brownfields projects from \$1 million to \$30 million and extended the sunset on brownfields laws to January 1, 2003.

In New Jersey, the Brownfields and Contaminated Site Remediation Act provides tax incentives to redevelop sites, offering reimbursement of up to 75% of the cleanup costs from newly created taxes to the state, and expanding the property tax abatement that municipalities can offer.

States like New Jersey recognize that they must get involved with committed financial resources to help their

cities revitalize their contaminated land. Many states in the US commit financial resources and/or promote new technologies that would help reduce cleanup costs.

The board encourages the province to provide financial resources through programs such as the SuperBuild partnership initiatives by placing perhaps special value on applications received for SuperBuild partnership funding under planned program criteria, and considering a brownfields partnership theme for future rounds of SuperBuild funding for site assessment and remediation.

In addition, the current Environmental Protection Act delays development of new technologies because the broad nature of the legislation requires a detailed review of product development work or a regular submission of an application for a certificate of approval. The board believes that any barriers to the development of new technologies must be removed. The province should promote applications for developing new technologies through many of its research and development programs that exist, such as the Ontario Innovation Trust and the Ontario R&D challenge fund.

We recommend developing a partnership with the Standards Council of Canada so new technologies that complied with a standard certification process would not require approval under the environmental legislation, and encouraging programs and incentives for new technologies.

In regards to the planning process, the third area, the board is pleased that the community improvement provisions of the Planning Act allow municipalities to provide for a broad range of community improvement activities. Bill 56, however, does not provide a deadline for the province to complete reviews of cleanup plans. This is necessary to avoid delays in processing the required approvals for developers to access municipal assistance. Unnecessary delays do add a financial burden on the developer that will act as a deterrent to interested parties.

Again, we say Bill 56 is a significant move forward in the redevelopment of brownfields sites in Ontario. To assist in better managing the risk of cleanup, the province must include provisions for off-site contamination, allow protection from prosecution, provide financial assistance in some committed form and place time limits on the planning process.

The province has the ability to dramatically change the landscape of its cities and provide the tools to allow its urban centres to grow smartly. The board believes that these recommendations will only strengthen what is groundbreaking legislation in Canada and reinforce the province's objectives of a strong economy, strong communities and a healthy environment.

Thank you very much.

0930

**The Chair:** That leaves us just over three minutes per caucus, and we'll start this time with Mr Marchese.

**Mr Marchese:** Thank you and good morning. Have you had discussions with the political staff of the minister

and/or the ministry with respect to issues of liability, and what have they said?

**Ms Allan:** Specific to the issues of liability, as a participant in the advisory panel we were involved in those discussions. To be quite forthright, our areas of focus have been primarily the planning process, as well as the financial areas. But we are very supportive of the work that the advisory board did and are supportive of those recommendations.

**Mr Marchese:** You mention here, "In New Jersey, The Brownfields and Contaminated Site Remediation Act provides tax incentives to redevelop sites." Obviously, in that particular instance, the state was much more actively involved.

**Ms Allan:** Yes.

**Mr Marchese:** In this bill, it leaves the municipalities a great deal of room to do whatever they can. The province is simply enabling municipalities to do that, but they themselves are not that actively involved in other forms of incentives. Do you have some suggestions for the province?

**Ms Allan:** Yes. I think one of the areas that we did speak of specifically would be something like the PST. You could provide some variation in the PST for the work that's being done on a brownfield site, and that would again show some form of more specific commitment. We certainly applaud the enabling legislation for the municipalities because I think that is very necessary and you hear that from all the municipalities.

But we feel that something such as a removal or delay of the PST, some of the moves toward tax-incremental financing—there are some specific options the province could participate in through taxes.

**Mr Norm Miller (Parry Sound-Muskoka):** Following up on that province participation theme, what other ideas do you have in terms of the way the province might participate?

**Ms Allan:** I think one of the other ones that we thought was interesting, through the advisory board again, was a recommendation specific to the education portion of the property tax, that that could be something where there could be some flexibility or contribution of the education portion of the property tax toward the development. There could be a delay in that, there could be a removal of that, it could be used later, it could be used to finance the remediation. So that was one of the other areas of suggestion, along with PST.

**Mr Miller:** What about some sort of reduction in corporate taxes to the company that's developing properties?

**Ms Allan:** I think those are some of the options. Right now, I think there are some fairly aggressive moves happening in the area of corporate tax, so I think we were trying to look at things that were specific to the brownfields. But the other thing we were very concerned about through the advisory panel, and the board certainly supports, was the idea that we're just looking for an equal playing field with the greenfields development. We are not looking for the brownfields sites to have significant

additional advantages, as much as trying to make the playing field more equal to what would be a greenfields site.

I'll just ask Paul, was there any comment?

**Mr Paul Laruccia:** No.

**The Chair:** Mr Kells.

**Mr Kells:** Very basically, in my riding I guess I have some of these acres that they're referring to in the city of Toronto. They're being held up, not necessarily because of the polluted brownfields problem; they're being held up because they're holding out to change it from industrial to housing. So it becomes a zoning battle over the value of the land. Of course, if you get it residential up goes the value of the land.

I have this great big brown hole, as I call it, in my riding and the argument is not over brownfields; it's over zoning. How we get around that, I'm not quite sure, and I don't know how brownfields is going to help that.

Just another observation: you quote the situation in New Jersey. I'm sure you're well aware that New Jersey is one of the most polluted states in the union and indeed that they have to be very active in this area. I recall about 15 years ago, 17 of the most polluted sites in North America were in New Jersey. So obviously they should be leading and they should be doing things in New Jersey.

I'm not saying that we're pious up here in the sense that we don't have these kinds of things. But we certainly don't have the chemical pollution that you can see in some parts of New York or in New Jersey.

**Ms Allan:** I don't think we're saying we're New Jersey either. I think we were trying to look at specific examples.

**Mr Kells:** No, and again, I don't mean to do a wedge here. It's simply that sometimes we use the American jurisdictions to tell us what we should be doing, when they come from vastly different situations.

**Ms Allan:** I think we were trying to use it as an opportunity of just a type of thinking, as well as the specific involvement in terms of participation.

**Mr Kells:** I'd have to ask you then, did the federal government participate? I'm sure probably.

**Ms Allan:** We think there are opportunities as well for federal government participation, I think some of which were identified in the advisory board.

**Mr Kells:** If the New Jersey illustration had some illustrations of how the feds get their money into the package, it might be something we could prevail upon our federal cousins to look at.

**Interjection:** We need more autonomy.

**Mr Kells:** We need more money.

**Mr Bradley:** I heard you make reference to the states of Michigan and New Jersey, and I heard you make reference to tax credits, which for governments translate into expenditures. Some people don't draw that conclusion, but I think many would draw the conclusion that it's actually an expenditure. So it's back to the grateful taxpayer having to pick up the tab when there's a real problem that exists with contamination of sites. Do you

think there would be any merit—and I think I know the answer to this—to a fund of some kind being established where there is a levy against those who have certain operations which could contaminate land, so that that could go into a remedial fund? It's not a superfund as such; it's in brownfields sites we're talking about. Would there be any merit to that at all in your view?

**Ms Allan:** I'm sure there might be. I think what we were trying to do was identify opportunities to work through existing vehicles as opposed to, in some cases, creating new vehicles. We felt there was an opportunity. We do have some excellent innovation and research development programs in the province, and we felt if somehow we could be leveraging those technologies and incentives into the area of brownfields, there we're leveraging off of something that's already existing, but focusing it; the same with the SuperBuild. But I think there's an opportunity for a lot of creative ideas in terms of how to try and share some of the costs in order to get these sites redeveloped, because at the end of the day, I think that's what collectively we're all trying to do.

**Mr Bradley:** The grateful taxpayer and government representing the grateful taxpayer would probably prefer that the owner of the property assume that cost. But the dilemma, as you have explained and as we have encountered constantly in this committee, is indeed, will they ever get developed if we go by very stringent rules that only the owner has to assume? So I think your suggestion about existing program and innovative funds that are there, that might be utilized for the purposes of finding ways of cleaning up sites and preventing migration of contaminants from sites on an ongoing basis, is a very good suggestion that we should take into consideration.

**The Chair:** Thank you very much for coming before us.

**Ms Allan:** Thank you very much for your time.

#### GREATER TORONTO HOME BUILDERS' ASSOCIATION

**The Chair:** Our next presentation will be from the Greater Toronto Home Builders' Association. Good morning and welcome to the committee.

**Mr Sheldon Libfeld:** Good morning, Mr Chairman and members of the committee. My name is Sheldon Libfeld and I am first vice-president of the Greater Toronto Home Builders' Association—GTHBA. I am also a principal of the Conservatory Group, a builder of new homes and condominiums in Ontario. With me today is GTHBA's director of government relations, Jim Murphy.

We have distributed copies of the GTHBA's response to Bill 56. This document is on blue paper and is entitled Presentation to the Standing Committee on General Government. In the next few minutes, I will highlight some of our comments but also speak as a builder who is familiar with developing brownfields sites.

First, GTHBA commends the government for proceeding with such legislation. In many ways, it is long overdue. We've heard a lot these days about smart growth, and this legislation will assist in making urban redevelopment easier. The committee should know that, in many ways, we are already building smarter in the GTA, where one third of all new home sales are condominium, 80% of which are in the city of Toronto. This is unheard of in most American cities.

The two main issues are liability and certainty for landowners. In our submission under page 2, we have addressed environmental liability. This is a difficult issue, but I must emphasize that it is the key issue if there are to be increased levels of activity on brownfields sites. GTHBA believes that the current legislation must go further. GTHBA recommends that the legislation be amended to clarify rules relating to the quality of remediation.

0940

We also believe there should be a definition of "non-polluter" in the legislation. It is vital that clarification of the liability for a non-polluter be added. The polluter must be responsible for the cleanup of their pollution, not the non-polluter.

Further, in order to encourage development on brownfields, increased certainty in the system must be provided and approvals expedited. I would like to refer to a project I am currently involved in. Mr Chairman, you'll be interested in this project because it is in your riding. The project involves approximately 200 units. It has taken over a year and over \$2 million to remediate. The development has been supervised by the Ministry of the Environment. We have deposited our record of site condition and have been told that the minister may do an audit on the site but have not yet been officially notified of this. This uncertainty has left the development in a state of limbo.

It is important to note that builders and developers build on greenfields because many of them find it easier. If we want brownfields to be developed, there must be increased certainty in the process resulting in streamlined approvals. I believe that the legislation will assist in attaining the certificate, but based on my experience there are always exceptions. But if liability and certainty are not addressed satisfactorily, many in our industry will still find greenfield development the path of least resistance.

Related to this point of certainty is obviously cost. There are different ways to deal with different contaminants. Obviously, our number one priority must be health and safety. However, within this there must be flexibility for dealing with contaminants in different ways. For example, burying non-hazardous material under fill is much more cost-effective than hauling such material away. By proceeding with this type of methodology, the existing community can derive substantial benefits. For example, by weighing the cost benefits of either exporting the material or burying it on the site, the result can be a park in a neighbourhood in which there isn't

one, and both the developer and the community win. There must be defined methodologies that address this issue which don't leave the developer exposed to communities that do not understand the relative risks of these materials and proceed based upon unfounded fears.

Financial incentives are also important. Our American neighbours are ahead of us. The US federal government has a large superfund for brownfield remediation. In addition, many American cities have creative tax financing mechanisms that assist in making these developments more economical.

While tax increment financing is referred to in the legislation and is a good step, we also believe that the federal government and the provincial government should allocate resources specifically for this purpose. Some of the funds for the Toronto waterfront should be earmarked for development on brownfields throughout the city. Again, it also benefits smart growth.

These are some of our suggestions and comments. I encourage you to read our submission. If you have any questions, Jim and I will be pleased to answer them. Thank you for your time and attention.

**The Chair:** Thank you very much. That affords us about four minutes per caucus for questions. This time we'll start with the government.

**Mr Kells:** Just at the end there I found your comment very interesting when you mentioned the \$500 million allocated to the waterfront. If I understand you correctly, are you suggesting it might be better spent spread farther away than just the waterfront in relation to cleaning up sites?

**Mr Libfeld:** It may be.

**Mr Kells:** I'd like to support you in that thought. I'm wondering how we do that. This is a rhetorical question in the sense that the government of the day has committed that kind of money, although I agree with you—I don't fully understand the parameters that they've committed it to. They used to talk about the eastern port lands and then they finally wised up and said we should talk about the waterfront generally. You're suggesting that some of that money should be used for brownfield cleanup. I think that's an interesting way to broaden out the benefits to the people of Toronto of that kind of large commitment. I don't know how the good people of SuperBuild feel, but I'm not too sure they had much to say about the \$500 million in the first place. But that's interesting.

Other than that, the blue paper submission anyway follows an interesting pattern from both the development and home-building industry, and I think it's logical. All I know is that the staff and even the political side are taking all this in, in great detail. I'm sure something will come of all this, as they say.

**Mr Jim Murphy:** I might just want to comment on the \$500 million. Obviously it was earmarked for a geographic area, but there are many sites in the city of Toronto, and Sheldon has referred to some of those that he's involved in, that might be former gas station sites that are in Scarborough or that are in your riding. There

may be some other things in Hamilton or in other urban areas that might benefit from such a thing. It's specific to a public policy that the government has decided and that you've all decided is a net benefit. So if some rules or some parameters for such a program can be created, it might be even more beneficial in terms of other sites specific to brownfields.

**Mr Kells:** I hear you. I suspect that the city of Toronto planning department might have something to say about that. I think it's an interesting proposition.

**Mr Bradley:** We have an unusual amount of time to ask questions on this occasion. You've been brief and to the point in all the material contained in your presentation. I was intrigued by your use of the word "superfund" for brownfield remediation. Of course a superfund, I think, is a great idea for a number of reasons. We used to have what was called an environmental contingency fund in the Ministry of the Environment to apply to the cleanup of sites, and then you could find the original owner and you'd hold that owner and try to assess the costs against that person. But a superfund suggests that somebody is paying into it. It suggests it's not coming out of the general tax revenues of the province. Who would pay into such a superfund for the purposes of brownfield remediation?

**Mr Libfeld:** I think you have to look at it as not necessarily a net expenditure. If you take a piece of land that is not being developed, and the sites we have looked at just don't work to be developed because of environmental concerns, then if the money is put into those sites, they will generate both revenue for the province and also for the municipalities by having those sites redeveloped. But someone has to kick-start the process and get this process started. So I would think that fund has to be developed first and the funds have to be expended, and we can derive substantial benefits out of expending those dollars.

**Mr Bradley:** I agree with you there. The question I would go back to is, who pays into the fund? Generally speaking, what criteria would you use for people paying into such a fund?

**Mr Murphy:** It might get back, Mr Bradley, to some of the questions we had with Mr Kells in terms of the fact that the province has already made a decision to allocate a considerable amount of money, some of which will go for remediation along the Toronto waterfront. So there's already funding that the province has earmarked. We suggested that the federal government should also come to the table and, as part of their urban agenda, whatever that might be, participate in that in terms of financing and funding.

It's a term, as you well know, that's derived from the United States, where they do have superfunds at the federal level, and many of the national home builder association members in the US are active on brownfield sites as a result of senior levels of government providing funding to the municipality to come in and help in remediating some of those sites in addition to the tax increment financing and some of the other things. I think

the government has already made that decision. They've already said, "We are putting aside a sum of money," which will be allocated to us, and our suggestion is that that should go further and not just be confined to one geographic area. As Sheldon has indicated, there's also a net benefit to the municipality and to the province in terms of new revenues, property taxes that would be developed as a result of these new developments.

0950

**Mr Bradley:** Do I still have more time?

**The Chair:** Very briefly.

**Mr Bradley:** It sounds as though you believe that the grateful taxpayer at large should pay for this instead of, as with the US superfund, for the cleanup of really contaminated sites. There's an allocation against, say, some industries that made the sites bad in the first place. So you are saying these should come under general revenues instead of out of a specific assessment against people who use the land for, say, industrial purposes.

**Mr Murphy:** The owners of some of those sites already have to remediate those sites and are paying themselves anyway.

**Mr Bradley:** Thanks very much, sir.

**Mr Marchese:** Just to stay in this field a little bit, the municipalities are very concerned about liability questions too that they might incur. You're talking about the industry's liability concerns as well. Certainly the Urban Development Institute talked about that; the Toronto Board of Trade talked about that. So there are some liability questions that linger both for the municipality and those who develop, particularly in terms of off-site contamination and how that connects to the new owner.

These questions are a concern in terms of whether we're able to develop these brownfields, and the province has quite nicely and kindly said, "Well, the cities can do that. You go off and do it and offer whatever incentives you can. And, by the way, this is good for you, city of Toronto or Hamilton, because in the end you'll have the benefits of taxing on those buildings." But some cities are concerned that they don't have the money and that there are liability questions. They're saying, "We should have a greater role of the province in order to get these things off the ground." I think you're also saying that. Are you saying that? And what else should the province be doing?

**Mr Libfeld:** First of all, I think there's a big misconception that it all has to be funds. If we start remediating smartly we can alleviate a lot of the expenditures that have to be done. There's one site that we have remediated which resulted in a park being created; 20% of the land that was designated on this site was put as park as a result of remediating it smartly because none of the contaminants were such that would cause any problem if they were kept there.

We're all talking about money but we have to get the methodologies in place, the ideas in place that the province can help us, through the Ministry of the Environment, to have the municipalities know that these kinds of waste and the sites can be remediated without any significant liability being obtained.

**Mr Marchese:** I understand that, but beyond that—and I understand that you could do it smartly and there are some easy things perhaps that could be done—I'm still suggesting some cities or municipalities are very worried about incurring liability questions that the law does not clarify sufficiently for them. They're saying the province should kick in some money for the cleanup itself of these brownfields in order for the development to start. So I understand what you just said, that some areas might be easier to deal with and how you do it is a question that all three levels of government could be involved in. I understand. I'm saying that unless there's a greater role of the provincial government, some of these sites might not be developed. Is that possible?

**Mr Libfeld:** I beg your pardon? That they will not be developed without provincial funding? Is that what you're suggesting?

**Mr Marchese:** Yes.

**Mr Libfeld:** There are sites that will not be developed, that just don't make any economic sense unless there's funding provided, and it has to be worked out between all three levels of government, how those funds are provided. We have to start putting the funds forward instead of just talking about it. If we start putting the funds forward, we can start getting things done.

**Mr Marchese:** There's another question as a follow-up. If the provincial government were to be involved and it would involve public funds, and the province would have to get into debt to do that, would we then support the province in getting involved in these matters?

**Mr Murphy:** I'll just make a comment. The province has allocated significant resources as part of the waterfront. That's within the current budget of the province; I understand from the Minister of Finance it still will be a balanced budget or a surplus this year. So those fundings are for this year and have been allocated. I would think that's a multi-year commitment, and perhaps it should be revisited in terms of an increase in allocation. I would turn to my comment that the federal government should also be involved in funding these, as they are in the United States. So that needs to be looked at: multi-financing. The initial steps have been taken. The legislation is another building block as part of that. I think what we're saying is that money also is an important component, obviously, as you've indicated.

**Mr Libfeld:** But the funding also can derive benefits for the province. If you put the money into remediation, it may make a site available for affordable housing, which is one of the goals of the province.

**Mr Marchese:** But they don't want to build affordable housing.

**The Chair:** Thank you very much, gentlemen, for coming before us here today.

#### ONTARIO ENVIRONMENT INDUSTRY ASSOCIATION

**The Chair:** Our next presentation will be from the Ontario Environment Industry Association. Good morning and welcome to the committee.

**Ms Ellen Greenwood:** Good morning, Mr Chair and members of the committee. I'm Ellen Greenwood. I'm chair of the advocacy committee for ONEIA. Just to clarify this, we used to be called, and some of you may know us as, CEIA Ontario. We have recently changed our name to ONEIA to properly represent our very strong Ontario roots. I'm here with Geoff Westerby, who is chair of our brownfields committee. Geoff represents some of the very sophisticated expertise that we have in Ontario. The environmental sector in Ontario, as some of you are aware, is incredibly well respected internationally. Some of the people, like Geoff, are used internationally on projects to advise on brownfield development. So we thought we would share some of our thoughts with you today.

I'd also like you to understand that our client groups are the landowners and the property people—the real estate industry—who are struggling with these problems. Our industry aims very clearly to provide them the best possible advice, to do things in an economical way that provides safe, environmentally sound cleaning up of sites. Of course, we recognize problems with liability too that our clients have to struggle with. So we very much welcome the opportunity to talk to you today. I'm going to pass my comments off to Geoff now.

**Mr Geoff Westerby:** We certainly appreciate the opportunity to appear before you today. As Ellen has indicated, ONEIA represents a wide cross-section of environmental consultants, technology providers and service companies that are very heavily involved in many aspects of brownfields development, from site investigation through remedial planning to implementation of remedial cleanup plans.

As a group, ONEIA certainly supports the intent of the Bill 56 legislation, which is to bring more clarity and certainty to the whole process of brownfields redevelopment and to reduce a number of the existing impediments that occur with respect to redeveloping brownfields.

When implemented, we feel that Bill 56 should result in quite substantial socioeconomic benefits to the province from the return of the many derelict sites that we now see around the cores and fringes of our city and putting them back into beneficial and productive use.

One of the general comments we have with respect to the legislation is that very many of the substantial details will be included in the regulations. These, of course, are not available yet. They will be developed over a period of time. We'd just like to make the comment that as the regulations are being developed, we feel we could make significant contributions to that, and we would certainly volunteer to provide whatever input and review services we could in the development of the regulations that will go along with the bill.

We have a number of specific issues that we'd like to comment on. I'll go through those now. What I've given you in handouts, by the way, is a copy of our original submission in response to the EBR posting, and then a series of what I was going to use as overheads, which are just speaking notes that I was going to follow along with.

One of the primary intents of the bill is to provide a degree of protection to non-polluting landowners who are involved in brownfields redevelopment from a variety of specified ministry orders. That, we think, is a very good thing. However, one of the issues we have is that there is a significant period of time between when a non-polluting stakeholder or purchaser first takes an interest in a property and the time that he has got the record of site condition filed and is then started to be offered the protection under the bill. During this period of time there are a lot of very important activities that would go on, including the due-diligence work that would normally be done to determine if a prospective purchaser wants to proceed with acquiring a property. This is normally followed by detailed site investigation and development remedial plan, the implementation of that remedial plan to the appropriate standards, and then filing a record of site condition, at which point the protection starts to kick in.

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There is also another fairly major activity that can be quite time-consuming, which is the rezoning of the property. In some situations it might be that the property has to be rezoned before the record of site condition is filed.

These various activities can cover periods of time that might run from weeks to a year or more. We feel it's important that the bill include provision for what is commonly known as either a standstill or a time-out agreement that does afford some protection to the prospective purchaser during this upfront period.

We also feel it's important to provide protection to non-polluting buyers from prosecution or civil liability, in addition to the protection from the regulatory orders that were just mentioned. As it stands, non-polluting owners may now still be held responsible for off-site impacts that they did not cause or permit. We think this could be potentially a significant impediment to brownfields redevelopment and we think there's a need to take a look at this issue. This also goes along with the support of the "polluter pays" principle, which we think is quite important. With this provision that allows non-polluting owners to be responsible for off-site impacts, we feel this is in a sense contrary to the "polluter pays" principle, since it allows innocent landowners to be held liable for environmental damages caused by others.

One of the things that's in the bill that we feel is significant to quite a number of our members is the requirement for use of qualified persons in conducting the various activities associated with the investigation and remediation of impacted sites. ONEIA feels very strongly and supports the requirement for the use of properly qualified persons. We feel this is one of the main keys that limits the liability of stakeholders by ensuring that the work is done in a competent and professional manner. At the same time, the use of qualified persons should provide a good level of comfort, both to regulatory agencies and to the public, that the work is being carried out in a proper and sound manner.

We recommend that this designation as a qualified person should be based on a certification process, rather than being done on the basis of licensing through professional associations. The main reason for this is that there are already a number of highly trained and quite experienced individuals who are currently working on and managing brownfields projects, who may not be covered by the licensing of existing professional associations. Examples of this could be toxicologists, risk assessors, biologists, chemists—people who may have spent many, many years doing this type of work but are not covered by professional licensing. So we feel that whole issue needs to be studied in some detail and, again, we would be quite happy to be involved in any further development of that process.

Another aspect about the use of qualified persons that we think is important is that the requirement to use qualified persons during the process should not apply only to the proponents of the brownfields redevelopment site and the people who are doing the work, the site investigation and the remediation work, but we feel that requirement should apply equally on the other side of the fence, so to speak, to the regulatory agencies. Any people at the Ministry of the Environment or municipalities or peer reviewers who may be retained by the municipality or the other regulatory agencies should have an equal requirement to make sure that the people they are putting on these jobs would also be considered as qualified persons.

One of the tools that has been used a lot under the existing Guideline for Use at Contaminated Sites in Ontario is the use of site-specific risk assessments as a tool that provides an alternative to cleaning up to the published generic criteria. ONEIA supports the ongoing use provided under the bill for application of site-specific risk assessments, since we feel in many situations it provides a viable alternative, in situations where use of the generic criteria may not be practical.

One of our main concerns associated with this, however, is that based on our understanding of the wording of the bill, there is a requirement that the director accept or not accept an SSRA within a time frame that is to be specified in the regulations.

**Mr Bradley:** What's an SSRA?

**Mr Westerby:** Oh sorry, site-specific risk assessment. It's a means of looking at the various impacts from a site, the pathways of exposure and coming up with remediation criteria that might be somewhat different from the published generic criteria. It allows you to focus more specifically on the characteristics of that site rather than using the generic criteria intended to cover a full spectrum of sites.

The concern is that the bill as worded does not appear to provide any requirement that the director or the ministry has to accept or not accept this SSRA in a particular time frame. This is very important because almost all the brownfields projects are very strongly driven by a variety of economic factors and most of these factors are quite time-sensitive. For a developer who is

looking at using the SSRA approach as part of the site remediation program, if there is no well-defined certainty or clarity on the time frame in which he can expect a response from the ministry with respect to an SSRA, it could in fact be an impediment to his proceeding with that whole project.

We think that it's good to maintain the SSRA, but we just recommend that there be some certainty available to developers in terms of the turnaround time for approval of the SSRA.

The bill also calls for regulations to set standards for phase 1 and phase 2 environmental site assessments. We support this approach since it will provide some uniformity and consistency in the work that's being done. Our main recommendation here is that consideration be given to using existing documentation that's already in place for this purpose.

The CSA, over the last number of years, has put a lot of time and effort into developing guidance documents for phase 1 and phase 2 site assessments, and it's our recommendation that consideration be given to adapting to, referring to or modifying these documents, rather than starting from scratch in setting these standards.

Our last comment relates to the environmental site registry that's proposed in Bill 56. This is the vehicle through which, when the site remediation is completed, a record of site condition is filed and installed on this registry. Then it becomes a mechanism by which the public can access this and obtain information about sites that have been remediated, what the conditions of those sites are and generally find out something about the history of the site to provide them with some comfort if they're looking at purchasing sites down the road.

We feel this is a good idea. One of our concerns is to make sure that the registry itself is as user-friendly and as accessible as possible. A number of the databases now in place are limited to referencing by alphabetical ownership. We feel the search parameters should be more extensive than that and include not only the owner, but things such as municipal street addresses, perhaps GPS or global positioning system coordinates, or the property identification numbers that are used under Polaris, the provincial land information system, so that people who may not be familiar with the history can still take any particular site and search the registry to see if there is a record of site condition for that piece of property.

Another aspect of this is that many of these brownfields sites are large industrial or sometimes commercial sites that typically, as they are redeveloped for other purposes, are broken down into a few or, in many cases, a large number of smaller lots. We feel it is important that the record of site condition be set up so that it can be tracked through the subdivision process, so that if you go from a very large site to a number of smaller sites, the ability to access that record of site condition is not lost in the process, that you'd be able to track it down to the level of individual residential lots, when you might have 50 or 100 of them on what might have been formerly an old industrial property for which one record of site condition was filed with the registry.

That's an overview of our comments. We appreciate this opportunity. We fully support the intent of the bill. We feel there are major benefits to the province to be gained from the redevelopment of these industrial sites, taking some of the stress off the developing of peripheral greenfields sites.

We feel ONEIA has the expertise and the capabilities to make a major contribution in this area, and we would certainly like to stay involved with the regulatory process. Thank you.

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**The Chair:** That gives us just under two minutes per question, and this time I think we're staring with Mr Bradley.

**Mr Bradley:** One of the concerns that people are going to express again is the timely approval of their application to proceed with the redevelopment of the site. Would you see then a need for an increase in staff for the Ministry of the Environment so that they can appropriately respond in a timely fashion? Because the alternative, it would seem to me, is to do a shoddy job—"shoddy" is perhaps too strong a word—to take a less intense look at the proposed application.

**Mr Westerby:** I certainly think the ministry has to be staffed in an appropriate manner to be able to respond to these in a timely fashion. Whether or not it's done through increasing staffing at the ministry or perhaps increased use of external peer reviewers and advisers, I'm not sure what the best approach is. The ministry, I know, is already using third party peer reviewers for this process. There may be opportunities to approach it in both ways.

**Mr Bradley:** Perhaps someone from your association would—

**Mr Westerby:** Well, certainly. We would—

**Ms Greenwood:** A qualified person.

**Mr Marchese:** They can do it for free too.

**Mr Westerby:** No, I wouldn't go that far.

**Mr Bradley:** I suspect you may get into a battle over that, and this will be something else to worry about. This will be many fundraisers down the line, but I suspect you will get into a battle with the engineers over whether you're going to have a non-engineer do the work. I suppose you'll want to draw up some kind of criteria for the government to consider, of using people who are not what you would call recognized professionals.

**Mr Westerby:** We're certainly aware of that issue, and I know it's going to be very contentious that both the professional engineers and the newly formed professional geologists will be taking a strong role in that. What we would like to see is not necessarily that they don't have a role, but that we would like to work with them. There are other organizations such as CEAA, the Canadian Environmental Auditing Association, that are currently looking at certifying various types of environmental professionals. Our main concern is that people who are well qualified and well trained to do this work—who just don't happen to be licensed professional engineers or licensed geoscientists—be excluded from the process,

because we think that would be a real loss. There are people out there doing this work now who have been doing it for many years, and they're very good at it.

I don't necessarily see it shaping up as a battle. I would like to see it as more of a co-operative front; we work with the engineers, we work with the geologists. I happen to be both; I'm a professional engineer and a professional geologist, but I work with a lot of people who aren't and who I have a lot of respect for.

**Mr Marchese:** That was my question, actually. I wanted to pursue the whole issue of qualified persons. The first question is, who are the non-qualified practitioners? Second, are you aware of cases where these non-qualified practitioners have been involved in some assessment of a site and have caused a problem that leads you and others to say that we need qualified professionals? So, who are they, and what examples are there where we have experienced problems because we haven't used professionals?

**Mr Westerby:** Some of the examples of the types of people who wouldn't be necessarily licensed as an engineer or geologist would include people like toxicologists, risk assessors. I'm aware of biologists who are doing this type of work through years of experience; chemists. So there are a number of different types of professional people who aren't licensed professionals.

With respect to situations of examples I could name where non-licensed people doing this type of work has resulted in problems, I'm not aware of any that I can put on the table. There may be some, but I can almost certainly say there are probably situations where professional engineers have got into situations where they may be working beyond their area of expertise and that has caused problems.

**Mr Marchese:** They would have to recertify, wouldn't they, like teachers? Shouldn't we recertify some of these folks?

**Mr Westerby:** Well, we certainly support the requirement for having a system in place to make sure that people doing the work are properly qualified and certified, and there should be a disciplinary process and there should be a decertification process if people don't meet those requirements.

**Mr Marchese:** Of course. Absolutely. I agree with that.

**The Chair:** Sorry, Mr Marchese, that's your time.

**Mr Marchese:** OK, thank you.

**Ms Marilyn Mushinski (Scarborough Centre):** I, like two previous questioners, would like to pursue your recommendations regarding the use of qualified persons.

You suggest that the designation be based on certification rather than on licensing by a professional association. What is entailed in the certification process? When I first read this, it sounds to me as if it's red tape. As you know, our government is in the business of reducing red tape to expedite good development so that we can get things like affordable housing and revenues from municipalities and all those kinds of good things for the provincial economy to continue to grow. Could you

tell me how this is going to meet with the parameters of incensing growth and development?

**Mr Westerby:** I think there are ways of doing this that are at arm's length from the government, and I don't think it's the intent of the bill that, for example, the Ministry of the Environment should necessarily be responsible for the licensing or certification.

**Ms Mushinski:** I would agree with that.

**Mr Westerby:** I think they are looking at doing that with some arm's-length third party group, be it the engineers, the geologists or some other group such as CEA.

**Ms Mushinski:** So that's your concern within this?

**Mr Westerby:** My main concern is that, as Mr Bradley pointed out, the battle line is sort of being formed, that the engineers and the geologists feel they're best poised to handle this whole process. I think there's a lot of merit in some of the things they're doing, but the biggest concern I have is that it will exclude a number of what we feel are highly qualified and experienced people from the whole process. I would not like to see it as battle lines being drawn but more as a cooperative effort that looks at some sort of realistic and verifiable process that allows anybody who has the proper training, experience and qualifications to be doing this type of work.

There are many people who are licensed as engineers who have no knowledge and no expertise in this type of thing. So even within the existing professional groups it's very important to limit it to the people who are properly qualified and have the relevant experience and training.

**The Chair:** Thank you very much, folks, for coming before us here today. Our time has run out.

#### REON DEVELOPMENT CORP

**The Chair:** Our next presentation will be from REON Development Corp. Good morning. Welcome to the committee.

**Mr Michael Peterson:** Good morning, Mr Chairman and members. Thank you very much for hearing us this morning. My name is Michael Peterson. I'm the president of REON Development Corp. I have with me Bob Leech. He's one of our directors. My area of expertise is environmental law. Bob is an environmental scientist, specifically a hydrogeologist, who has decades of experience in the environmental area.

I want to speak briefly about who REON is, what we do; second, I'm going to touch on what we see as the special requirements for brownfield development; and third, I'm going to discuss some of the aspects of Bill 56. I have talking points that begin in writing on the second page of our presentation. I'm going to touch on some of those. Some of them, frankly, have already been dealt with in presentations this morning and I may just go by them.

Our company, REON Development Corp, is a consortium of scientific and professional firms whose competency and core business is the development of contaminated sites. We're a wholly Canadian firm. We

were formed in 1997 to do brownfields work, and I think we're unique in that we put PhDs in toxicology, hydrogeologists, environmental lawyers, planners and architects all together at the same table, at the same time, to find solutions to brownfields problems.

We're currently working on brownfields projects in Victoria, BC, and Waterloo, Ontario, and our marquee project at this point is the development of the former Stelco Swansea site situated in the High Park area in Etobicoke. In the material we've handed you there are a couple of excerpts or reprints from the Toronto Star and the Report on Business this week, which give you further details about that particular development.

What are the fundamentals required for brownfields in our view? First, and other people have said this, there has to be a high degree of regulatory certainty. We expect rigorous environmental standards, but they have to be clearly established. Vague cleanup standards with high levels of discretion are going to deter financing, and without financing you're not going to get it done.

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Second, complete environmental information has to be available or obtainable without risk. Where the information isn't already available, interested parties have to step in and generate information. They have to go onsite, dig holes, drill bore holes, take samples. A typical sampling and analysis program on even a small site costs in the tens of thousands of dollars. So if a brownfield developer is faced with actually taking on an unquantified and unknown liability as well as spending the cash, it's not going to happen.

Other people this morning mentioned as well that the parties who have to be protected from this liability include municipalities. They're major players in this. They're the ones who frequently have to deal with abandoned or orphaned sites. So the legislation has to protect the municipalities as well.

Finally, the process of investigation, analysis and regulatory sign-off has to be timely. You'll appreciate the properties are not normal properties; they won't attract normal financing. It's our experience that what we're talking about here is venture capital financing. It's exactly the same thing as financing a dot-com. The rates of return that people are looking at are very high, and you can't afford to wait six months, nine months etc for a regulatory sign-off when your financing costs that amount of money. If we can't get timely sign-off, again it's a deterrent.

Let me move to the bill and tell you, first of all, a couple of points that we think are very favourable. First—and this is a purely cosmetic change—abandoning the phrase “certificate of prohibition” is long overdue. You can appreciate that there are community concerns in environmental matters. Using the phrase “certificate of prohibition” frankly scares people, and just changing that to something more neutral like a “certificate of property use” is an inspired change, and we applaud it.

Second, and we touched on this, legislated standards: it seems clear that the regulations will capture the criteria

that now are only in the guideline. The guideline doesn't have the force of law. Putting it into the regulation will create more certainty. The only thing we should add is that the guidelines are based on science. Science changes from time to time, it evolves, and there has to be a process to be able to change those guidelines as new scientific information comes along. Those are things that we think are great additions in the bill, and we support them.

What can be improved? You already heard from at least one party this morning concerning the timing on a site-specific risk assessment. The specific time frame is going to be in regulations. We would like to see a time frame of 60 or 90 days. Second, the legislation as it's presently drafted provides that the Ministry of the Environment does not have to meet its own timeline. There will be 60 or 90 days—whatever it is—prescribed, but the ministry doesn't have to meet the deadline. That, in our view, can be a fatal error.

We have two suggestions to deal with it. Number one, put in a provision that if the Ministry of the Environment doesn't meet the timeline, the report is deemed to have been accepted. So if they can't do it within 60 or 90 days, it's acceptable. If that's not acceptable, give us an appeal, possibly to the Environmental Review Tribunal. If the Ministry of the Environment can't deal with it in 60 or 90 days, we can appeal to the Environmental Review Tribunal and have somebody else look at it if the ministry is too busy. That's one change we would propose.

A second change we have mentioned—the last of our talking points—has to do with the protection from liability for people before the record of site condition is dealt with. Geoff Westerby, who spoke previously, discussed that point. There's a whole host of activities that go on before the site condition is done. There has to be protection for the people who are doing that.

The last point I want to mention, which I think is a new one, has to do with the tax assistance provisions in the legislation. It's presently contemplated that the municipality has the ability to provide tax assistance on a case-by-case basis. In our view, that's a mistake. Nobody's ever going to see that money, because the municipality will give tax relief in the bylaw on one hand and claw it back in some other fashion on the other. Our suggestion is that the municipality be given the authority to give tax relief, but they make a single bylaw on an annual basis which sets out what they're prepared to give as far as tax relief. So their bylaw comes out, probably at the same time as they set the tax rates, it sets up a list of properties with the amount of back taxes that are owing and specifies, "We will be prepared to give X%, X%, X% on these properties on an annual basis." Otherwise, it's our suggestion that this is going to be an exercise in futility. A small developer comes along, and there are a half-million dollars of back taxes: "Well, we'll give him X amount." TrizecHahn comes along, Tridel comes along: "Well, they're bigger, they've got deeper pockets. We're not going to give them that amount; we'll give them a lesser amount." It's just going to be a poker game.

If you want to make it work, put an annual schedule with the amount of taxes they're prepared to concede, and put that up to anybody who's prepared to be a brownfield developer.

Those are our comments. We will be putting in a more detailed textual suggestion on the legislation. I understand the date for that is September 21.

**The Chair:** Thank you for your presentation. That leaves us with just over three minutes. We'll start this time with Mr Marchese.

**Mr Marchese:** Just to get into the questions quickly, with respect to the timeline—the fact that the MOE has "the power to reject a SSRA within an undetermined time"—it makes sense that they ought to be restricted as well, or at least be able to respond within a certain time frame. Have you had discussions with the ministry people about why they wouldn't give you such assurances or why they could not put in place something that would give such an assurance?

**Mr Peterson:** I haven't, but I can appreciate that it's probably a question of resources. They're concerned that they don't have the resources to meet it within the specific time, and they don't want to be in a position—I can appreciate that nobody in the government wants to be in a position where something goes through because nobody's had the time to look at it. But I fully support what Mr Westerby said previously. If the MOE themselves don't have the resources, there are tons of scientists out there who do these kinds of things. Outsource it and have the review done. SSRAs are peer reviewed now in any event. There are people who can do it.

**Mr Marchese:** I'm sure there are. I think you need such assurances, and the government ought to be able to give you some mechanism to deal with that. If it's lack of staffing, they should deal with that, and if it's something else, they should deal with that as well. In terms of municipal assistance, my concern has been that this government has been very magnanimous in saying to the cities, "Go out and help out in whatever way you can to develop the brownfields." But they themselves have done so very little in terms of helping out. Do you have any suggestions for them in terms of what else they could be doing? My sense is that some cities will have the resources and some not. Some are broke, and some are very broke and getting broker. The concern is that unless the province comes in with some contribution of sorts, it might be difficult to develop some sites.

**Mr Peterson:** That may be the case for some sites, but I suspect that in a lot of the cases we're dealing with, the municipality realizes they're already in the hole for X dollars and they're not going to get the money. The sites are abandoned, the owner has gone bankrupt or disappeared years previously, the taxes are just collecting. Unless we come in and deal with it, it's just going to get worse. What they're giving up is on paper, because it's not realistic.

**Mr Marchese:** So in your mind, unlike the United States, which is becoming more heavily involved in many sectors of culture, of infrastructure, of housing, any

sort of field imaginable—they're involved at the state level and they're involved at the federal level. I feel afraid that here we're not getting the federal involvement we desperately need, and/or the provincial involvement, to get some of these things done. What you're saying more or less is, "This bill is OK. It should work with a few areas of touch-up. It should be all right. We don't need any other provincial assistance"?

**Mr Peterson:** I guess we're dealing with the realm of the possible. Of course the assistance would be welcome, but—

**Mr Marchese:** Thank you.

1030

**Mr Kells:** I don't want to be provocative, but I would point out to the honourable member that when you talk about financial problems you might be talking about the city of Toronto. The cities that surround Toronto, in the greater Toronto area, are all in very good financial shape. I think you should check their reserves. You'll find they're not in bad shape at all. Sometimes we city members shouldn't take the Toronto experience and sort of generalize it too widely.

**Mr Bradley:** The ones that weren't forced to amalgamate; you're right.

**Mr Kells:** We can talk about that some other time.

I would like to commend you on your development plans for what you call Windermere Village. Just a small correction: that's not Etobicoke. Etobicoke doesn't start until after the Humber, although I'm happy any time anybody mentions Etobicoke any more. Actually, I drove by it for so many years wondering why and how come, and I'm pleased there's some action being taken there. I understand some of the neighbours aren't terribly happy, but when all is said and done I think it will be a great development.

I do notice, and wouldn't mind reading into the record, that David Miller, the ward 13 councillor for that area, said in the *Toronto Star*, "When we look at issues of urban sprawl, we all have to ensure that people can live successfully in our city. We can't as a council on the one hand decry development on the Oak Ridges moraine and stall reasonable development in the city." That's a kind of nice thing to get on the record from a left-wing councillor.

**Mr Peterson:** Councillor Miller was very supportive.

**Mr Bradley:** I remember you quoted me in one of your brochures.

**Mr Kells:** Listen, when you get a good quote, you use it.

You mentioned tax assistance in a general sense. You said the municipalities give and the municipalities take away. Could you be a little more specific? Are you talking about the city of Toronto, or could you give me a specific in that regard?

**Mr Peterson:** I don't think I want to be specific, but in general it's a negotiation. If you do this on a site-specific, developer-by-developer basis, it's just going to go back into the negotiation. As I said, Tridel will get one deal, some local guy will get another deal, and Minto

from Ottawa will get another deal. The whole point is that we need certainty. If they're prepared to put money into it, put it up front. If they're not, then it's zero and that's fine. But it's just going to be a waste of time, because you're not going to see any of the money.

**Mr Kells:** Then how do you suggest we remedy that problem in legislation?

**Mr Peterson:** You specify that they can pass a bylaw on an annual basis listing their contaminated sites, listing the amount of back taxes and indicating what amount of—

**Mr Kells:** And that's locked in for a 12-month period?

**Mr Peterson:** Fair enough, sure.

**Mr Bradley:** The proposal you have with the options you're talking about—I think you softened it after you said it initially—about the 60 or 90 days, that it would be deemed to have been approved, would not be acceptable to me. I had the job of being Minister of the Environment at one time, and I would not want to have faced a situation where somebody could come back at me, our ministry having approved something because it didn't get time to approve it. The second suggestion, that either they retain staff to be able to do so or they contract staff, if it's on a short-term basis in a short-term situation, would be the better of those two options.

I understand the importance of the timeliness of getting approvals. That's always a dilemma within government, where one minister is getting a lot of noise about slow approvals and another minister is getting a lot of noise about, "You better be sure everything is fine." So I think that suggestion is good.

When you get into municipal tax incentives, I'm a bit concerned about municipalities competing with one another using taxation. One of the good things about Ontario that Americans have and we don't have—and I think it's good we don't have it—is municipalities being able to play with the taxation system in such a way as to lure General Motors to somewhere, or something of that nature. I'm a bit concerned about that. Would this refer only to back taxes, so you're not thinking of any ongoing tax relief that a municipality would provide?

**Mr Peterson:** I wouldn't expect prospective relief. What we're looking at in most cases on these environmentally contaminated sites are ones that have been abandoned where there are large amounts of back taxes and the municipality has very limited ability to deal with those, to reduce them. So you're frequently stuck with properties that have little or no value and then, in addition, they've got a minus sign on them in terms of the taxes.

**Mr Bradley:** By the way, I think some good suggestions have come forward to this committee. Your suggestion about the one bylaw for the year, so we don't have unequal treatment depending on who the developer happens to be, is very wise for many, many reasons, because corruption comes about when you are allowed too much discretion as to who is going to get the better tax break sometimes. So that eliminates the potential of

corruption and also is much fairer when everybody knows the rules for that particular year.

I think that many of the suggestions you have are good. I saw Dianne Saxe's article in the *Toronto Star*, and I quoted it in the Legislature in early June. It talks about many of the problems all of you who have come forward today have brought forward. Hopefully the bill can address that. I think the minister wants to see those matters addressed with amendments that will be forthcoming from the government and the opposition. Thanks very much, sir.

**The Chair:** Thank you, gentlemen, for coming before us here this morning.

#### ONTARIO CHAMBER OF COMMERCE

**The Chair:** Our next presentation will be from the Ontario Chamber of Commerce. Good morning, and welcome to the committee.

**Mr Doug Robson:** Good morning, Chairman. I was curious about what I came in on at the end of Etobicoke there, but I won't pursue it any further.

As many of you know, my name is Doug Robson. I'm president and chief operating officer of the Ontario Chamber of Commerce. To my left is Mary Webb, the senior economist for Scotiabank. Mary is the chairman of our finances and taxes committee. Some of you know Atul Sharma, to my right, who has been spent a few years around here like I have. He is our vice-president and senior economist.

We appreciate the opportunity to present to the committee and make comments and recommendations with regard to Bill 56, the Brownfields Statute Law Amendment Act.

As most of you know, the OCC is a federation of 156 local chambers of commerce and boards of trade across Ontario, and through our federation we represent over 56,000 businesses.

Brownfield redevelopment is an important issue to our members, as many of them will benefit from the cleanup of contaminated lands, especially in communities like Hamilton and Toronto. There probably isn't a municipality that doesn't have at least one neighbourhood that would not benefit from the cleanup of contaminated soils, whether it is an old manufacturing plant or even an old gas station.

We congratulate the government for its progress in encouraging brownfield development and pursuing the goals to remove the main barriers to brownfields cleanup and redevelopment. The proposed legislation provides some clear rules for the cleanup of contaminated brownfield sites. It also aims to limit future environmental liability for municipalities, developers and owners of brownfield properties, as well as streamlining planning processes to expedite brownfield projects and help municipalities provide financial support for brownfield cleanup costs. In our opinion, all these are laudable goals.

Two of our members, the Hamilton Chamber of Commerce and the Greater Oshawa Chamber of Commerce,

presented resolutions regarding brownfield redevelopment at our annual general meeting and convention in May. Both of these resolutions were unanimously approved, and you'll find them at the end of this presentation.

The Hamilton resolution contains many of the points that are incorporated in the legislation itself. We appreciate the government's listening to our input on this matter while developing its legislation.

The second resolution was presented by the Oshawa Chamber of Commerce and contains an interesting proposal which we believe merits serious consideration. If adopted, the government would refund the land transfer tax on properties designated as brownfield renaissance enterprise zones and community improvement areas. We believe this is one of the arrows the government can use in its arsenal for the redevelopment of brownfield sites, along with TIFs, or tax incremental financing. TIFs have been successfully used in the US, and we believe this type of program will encourage redevelopment and can be easily adopted in Ontario.

One of the main concerns surrounding brownfield redevelopment has always been the issue of environmental liability for contaminated land. While this legislation addresses many of those concerns, there are some specific problems which we believe need to be addressed.

First, the issue of civil liability is not addressed in this legislation. This will likely cause developers and particularly lenders to remain cautious. Without interest from developers and approvals from lenders to finance the redevelopment, there will not be much remediation of brownfield sites.

Secondly, liabilities relating to contamination of neighbouring sites are not resolved. We understand that there is currently a court case under appeal which may rule that a neighbouring property owner is entitled to demand a higher level of cleanup than that required by the MOE guidelines. If that case stands up to appeal, then chances of success of the bill will be undermined.

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Thirdly, director's liability is another issue which needs to be clarified within the legislation. There is no specific protection for officers or directors of a corporation involved in developing a brownfield site.

Lastly, the economic incentives are limited to municipal and regional government support with no provincial fund or incentive.

Our understanding is that under the TIF program, municipalities and regional governments establish a baseline property assessment for designated brownfields sites or community improvement areas. The baseline assessment for property taxes purposes reflects the current condition of the site and is generally of low commercial or industrial value.

As a property is being remediated and once the remediation has been completed, the property has a higher value and pays more in property taxes to the municipal and regional governments because of increases in its assessment. Under the TIF program, the regional

municipality and the local municipality agree to reinvest any amount into the designated site in excess of the baseline assessment for a specified period of time; for example, 10 years.

Since a large portion of tax is set provincially, we are pleased that the provincial government has agreed to fully participate in this type of program by agreeing to reinvest its portion of the property tax collected in excess of the baseline assessment. If you review the Hamilton recommendation, you will see that it specifically calls for municipalities to be allowed to retain the provincial portion of the property tax for the tax increment fund.

The Smart Growth strategy is a provincial initiative. Therefore, the provincial government should also look at providing some seed funding to kick-start the redevelopment process. Once the time period for the TIF program has expired, then all levels of government will experience a windfall in property tax revenue from the designated site.

By addressing the concerns outlined above—civil liability, director's liability, and provincial funding—lengthy and high-risk remediations are more likely to be pursued, in our opinion, than if these issues remain outstanding. The greatest benefit to our province will be from the remediation of the most contaminated or high-risk sites.

The Ontario Chamber of Commerce would also like to see the government move expeditiously on implementation of the legislation. This includes establishing the registry and establishing standards of qualified professionals.

The Ontario government's Smart Growth and brownfields redevelopment initiatives are a balanced approach that will help Ontario's competitiveness with its neighbouring jurisdictions by making more urban land available for commercial, industrial and residential development. This, in turn, will help alleviate urban sprawl and the related issues of gridlock and congestion.

We support these initiatives and have spoken with members of the government and the opposition about the need to establish an Ontario transportation authority to help fulfill the Smart Growth vision. We would like to spend a few minutes talking about the Smart Growth initiative and how it links with brownfields redevelopment.

As an organization that represents business, we know that a vision cannot be achieved without a plan. This was the reasoning behind our proposal for the province to study the need of, and then creation of, an authority to take over Ontario's highways and public transportation systems. The authority, which we call the Ontario transportation authority, would involve all levels of government in order to support Ontario's priority of remaining the most competitive jurisdiction in North America.

Smart Growth embodies a visionary plan which understands that regions are the engines of the economy. It realizes the need to contain urban sprawl and to build community infrastructure. We believe that this legislation helps to achieve that goal.

Smart Growth also looks to provide public transit and transportation alternatives while protecting the natural and cultural heritage of its community. Smart Growth is by no means a novel or new idea; it is implicit in our understanding of development yet it is so often ignored, largely because levels of government don't work together to make it happen.

North America has seen countless examples where sprawl was not controlled, causing congestion and gridlock the likes of which had never been seen before. At the height of the urban disaster in Atlanta, showcased during the Summer Olympics of 1996, the dismal condition of their sprawl was displayed for the world to see. The United States quickly learned their lesson and implemented the innovative principles of Smart Growth. Today, American cities are becoming more livable. The vision of Smart Growth is becoming a reality, and American cities are becoming more and more attractive to Canadians.

Canada has proudly held the global reputation, designated by the UN, of being the best place to live on earth. As Canada's most populated region, Ontario cannot let our country down. We must seek to build better and more efficient communities, optimizing the link between land use and economic development through brownfield remediation.

A central tenet of Smart Growth is that it involves both the public and private sector. This system of public-private partnership ensures that the voice of both the government and the citizen resonates throughout any plan and ensures transparency is present in every aspect of its operation. The American model has already tried and tested this financial structure involving TIFs and has seen excellent results. We look forward to working with government to implement its rehabilitation strategy and implementing Smart Growth strategy.

Overall, Bill 56, the Brownfields Statute Law Amendment Act, is a good step in the right direction and goes hand in glove with the Smart Growth strategy. We have some specific concerns with the legislation, which we've outlined in this presentation, and we'd be happy to answer any questions that you may have.

**The Chair:** That gives us about three minutes per caucus for questions. This time we'll start with the government benches.

**Ms Mushinski:** Thank you for your presentation, Mr Robson. It's very interesting. Are you suggesting that brownfields remediation should not take place without a Smart Growth plan in effect?

**Mr Robson:** We're saying it's an integral part of it, in our view. Atul, do you have something to add to that?

**Mr Atul Sharma:** I think that it's probably one and the same. Part of the success of the Smart Growth, certainly in the US, has been the fact that they have been able to remediate brownfields sites. If you can have remediation of brownfields sites without Smart Growth, then certainly I think we should proceed on that basis, but Smart Growth is an overall strategy which involves not only the remediation but also public transit and trans-

portation and congestion, which are important issues as well. In our view, a lot of them are tied together. So I think the short answer is if you need to proceed only with one part of it, then certainly this would be a good part to go ahead with.

**Ms Mushinski:** OK. I'm thinking specifically of—let's use an example—Ataratiri. What you're saying essentially is that if there is this miraculous remediation of the whole of the Ataratiri lands, it should not be done without a Smart Growth plan being in place for redevelopment.

**Mr Sharma:** Certainly looking at Ataratiri in particular, you would have to look at the impacts to congestion within the city of Toronto and look at the transportation infrastructure that would be needed to support it. I don't think you can do it in isolation, because that may just lead to greater congestion and gridlock, which I think is the opposite of where the government wants to go.

**Mr Miller:** I have a question to do with the amount of taxes that should be forgiven in terms of developing a specific piece of property: you have a specific site and the cost of remediation is \$1 million. From my perspective, if I was the developer looking at that property, if I was going to buy it and receive future tax credits of \$1 million to cover my costs of remediation, that would be ideal. Do you have anything to add to that?

**Mr Robson:** The whole thing is to spur the developer to do the work. It's our belief that unless there are some incentives in there, people aren't going to spend the capital originally to move it along. That's why you need the incentive.

**Mr Sharma:** One of the proposals—and I think Mary might have some comments on it as well—was to do a tax increment financing, where you set up a baseline assessment and anything that's in excess of that assessment, as property is being remediated or once it has been remediated, goes back in to help fund the remediation. That way the municipalities and the province have agreed to accept a certain level of revenue from that property for a fixed period of time, and then, once that time has passed, they'll receive a windfall of the higher assessment.

**Ms Mary Webb:** The other very important part is that developers have generally conceded that it's not so much the tax incentive; it's limiting their liability going forward. So I would see that as being the centrepiece of this legislation. In fact, the municipalities have limited fiscal room right now and certainly that's not going to change in the near future. The liability issue is a key stumbling block that, if removed, would assist this area.

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**Mr Bradley:** The last comment perhaps partially answers my question, because I know that either a yielding of revenue sources or an expenditure has an impact on the deficit, on the debt. When the NDP was in power, I would meet with my local chamber of commerce and they would tell me the number one problem in the province with the NDP in power was the debt. It

seemed to me the day after the election all of a sudden the debt was no longer important, that we could have all these tax cuts and we could have designated expenditures in certain areas and it would not somehow impact upon the debt. The debt appears to be out of everybody's horizon right now, and it is amazing to me. So I was glad to hear you say that it was more a matter of the liability. I guess the general question is, Mr Robson, is the debt still a problem for the Ontario Chamber of Commerce?

**Mr Robson:** Very much so, as far as—

**Mr Bradley:** Because I just don't hear it now, with the Conservatives in power. I don't hear it any more.

**Mr Robson:** It comes every January when we come here for starters to make our presentation. The Treasurer has heard us. We indicated that the province wasn't paying enough down on the debt as far as we were concerned, and that they should target what percentage of the GDP the debt should be, because at one point it was like 31% and we said it usually runs around 15%. I think Atul may have some strong things to say about that as well.

**Mr Sharma:** Just to reiterate, it's been an issue which we've certainly been on record as saying needs to be addressed, and made a couple of proposals to the Minister of Finance. He has certainly taken up the challenge and reduced the debt more than has been expected in the last couple of budgets. We certainly applaud that but want to keep the pressure on him to continue to do so.

**Mr Bradley:** Lurking in the background, again, is a concern I have. It's tough for the committee, because I really would want to see brownfields development take place. I really do and I'm probably willing to sacrifice financially to be able to do so, and yet I see the economy seems to be slowing down considerably. We may be into a deficit position sometime if we have these calls for federal and provincial expenditures and municipal expenditures; we're liable to get ourselves into a more difficult situation.

But in total, I take it you believe that it would still be valuable to proceed with these tax incentives and these investments by senior levels of government even in view of the slowing-down economy and the declining revenues which governments are facing.

**Mr Robson:** Certainly, but Mary had a comment related to your other question as well. So I'll let her—

**Ms Webb:** Two points. First of all, as it stands, the revenue impact of the legislation is not that major. The second thing would be we actually did say, "Should the province be putting a little bit more in?" The reason we said that is it's a question of spending priorities or tax expenditure priorities, and I would argue that over the past year to two years the problem of managing urban growth, and in particular reviving older parts of the city, has been recognized as a key priority that can't keep being pushed to the back burner.

**Mr Bradley:** Yes, I agree with you.

**Ms Webb:** So definitely, the difficulty of a slowing economy is acknowledged. The net cost of this particular proposal makes it worth considering.

**Mr Marchese:** Thank you for the presentation. It was interestingly more balanced than some others, I thought. When you talk about Smart Growth, I take an interest in that because you say Smart Growth also looks to provide public transit and transportation alternatives. I think it's an important consideration. What you also said is that we should take an integrated approach to issues. It's not novel, but I agree with you.

Part of the concern we've had is that this government has a strategy called Smart Growth where that strategy includes building seven new highways, one just north of Toronto, and barely a cent on transit. Did you have a reaction to this Smart Growth plan that includes seven new highways and very little on public transit?

**Mr Robson:** As we mentioned, we talked about the Ontario transportation authority, and even if you were to implement that in a small way, what we would probably recommend is you take something like GO Transit, which is an authority technically, but if you use it as an authority like we're talking about, it desperately needs capital. It's a very efficient organization; it's the fifth largest in North America. But if you took it back from the municipalities that are funding it now, who sort of resent it, and you had the federal government at the table and you had the business sector at the table, you'd find that you'd get federal money there because they would be recognized. You'd have provincial government there and you'd have municipal money there. You'd also have the ability to get what they call 20-to-30-year money, the long-term investment, which the 20-to-30-year money people will not invest directly with government, because they say, "You guys are two, three, four, five years. You've got an election. You cost us money." We need the commitment which authorities can give of 20 to 30 years.

Last, Minister Collette, whom we've talked to about this, has committed that he's very interested in this, and he's also interested in doing tax instrument things that aren't being done now. I don't think Minister Flaherty can stand up and say, "I'm going to forgive the provincial portion of your tax," but if the Minister of Finance of Canada stands up and says, "If you invest in infrastructure bonds or whatever, they're tax-free," then that's all the tax, and they're interested in doing that. So what we're saying is, as part of the Smart Growth, maximize the financing, and you've got to be very innovative to do that.

**Mr Marchese:** I was interested in your comments about the highways, but I'm also interested in your point about the economic—

**Mr Robson:** If I may, it takes eight years to build a highway.

**Mr Marchese:** "The economic incentives are limited to municipal and regional government support with no provincial fund or incentive." Do you think that without any provincial fund and/or incentives this development of brownfields will be very successful?

**Mr Robson:** We're cautious about that, because we know the municipalities are stretched. We think it needs

that provincial push to make it go over the top, along with the other concerns we have.

**The Chair:** Thank you very much for coming before us to make a presentation today.

#### PACKAGING ASSOCIATION OF CANADA

**The Chair:** Our next presentation will be from the Packaging Association of Canada. Good morning. Welcome to the committee. Please be seated.

**Mr Louis de Bellefeuille:** It's really an honour for me to address such a distinguished group. My name is Louis de Bellefeuille. I'm the chairman of the board of directors of the Packaging Association of Canada and also a director of sales and marketing for Winpak. Winpak is a material and machinery company listed on the TSE. With me today is Larry Dworkin, an economist and our director of government relations for the association.

The Packaging Association of Canada, PAC, is a trade organization whose diverse 1,200-member base includes suppliers of every kind of packaging product, materials, equipment and services. Our membership also encompasses the many user sectors that purchase a wide range of packaging technology and expertise for their consumer: industrial, commercial and institutional products. This includes food, beverage, pharmaceutical, personal care, automotive maintenance, hardware, home ware, agricultural and chemical product companies.

The packaging industry generates \$12 billion in sales annually, of which \$2.5 billion is exported. We employ 125,000 persons, with more than half located in Ontario.

PAC has established a solid track record and has consistently played a pioneer role in environmental protection and conservation. Let me give you a few examples based on independent data from StatsCan.

Annual packaging waste in 1996 was 2.6 million tonnes, a 51% reduction from 5.4 million tonnes in 1988. This was achieved during a period when the population increased 11%. Per capita, this represents 56% less packaging sent to landfills in 1996 than in 1988.

In 1996, 2.2 million tonnes of packaging material were recycled into new products and packages, compared to 600,000 tonnes in 1988. Also in 1996, Canadians reused about four million tonnes, or 47%, of the total amount of packaging used.

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This didn't happen by chance. As a result of our commitment to the national packaging protocol, our members invested millions and millions of dollars to reduce, reuse and recycle packaging. In fact, we were instrumental in the development of the national packaging protocol, which was a voluntary agreement between our industry and all levels of government to reduce packaging waste by half between the years 1990 and 2000. We achieved the target four years ahead of schedule.

Our packages have far less material in them than they did a decade ago. We also use significantly less energy to produce them. At the same time, our members have

maintained a high standard required to protect the product from a health and safety perspective. These accomplishments, which we continue to better, clearly demonstrate that we are one of the more advanced nations in the world in solid waste management in the packaging sector. A more detailed analysis of how we achieved the protocol's targets is attached to our brief.

Now I would like to give you some general comments on Bill 90 itself. The PAC supports in principle the need for greater financial stability for municipal recycling programs. We also support strengthening the infrastructure which will allow an increased amount of packaging material to be diverted from landfill sites. PAC believes municipalities' financial participation will create a definite incentive to maximize the efficiencies of their operations to drive down costs.

Our major concern with Bill 90 is its vagueness. For example, it doesn't spell out who pays, how it is to be paid or how much it will cost. We have heard that the levy is to be charged against brand owners and importers of first record such as a major food retailers. But this is not stated in the legislation. In fact, it could end up being the packaging material manufacturer who pays. And it will be a board of directors, which we have no say on, which determines who pays.

Reassurances also have been provided that no matter what type of levy, it would only be a fraction of a cent per package. This doesn't provide much comfort, since in many cases this could exceed the profit margin that allows our industry to compete both at home and abroad. We also don't know how it is to be paid. Originally, we heard the levy or tax would be based on sales. That seems to have been replaced by a material-specific levy that pits one material against another. Not only does this move away from the blue box collective basket of goods approach; it could have dire economic consequences for individual packaging material manufacturers.

I'll give you an example. Under this yet to be determined formula, if the cost of collecting and recycling non-alcoholic beverage glass containers is significantly higher than for plastic containers, food and beverage companies will make the obvious packaging choice in their economic interests. This could negatively affect 20% of the glass industry and the jobs that go with it.

We are strong believers in establishing a level playing field through legislation. But as Bill 90 now stands, certain firms, many of which are importers, would be exempt from paying a levy because their material is either not recyclable or their sales are below a certain threshold. This, in effect, subsidizes these firms while penalizing the domestic producer who is living by the intent and spirit of the act.

We would like to reiterate some of our concerns expressed to this panel last Friday by representatives of the plastics and paperboard industries in regard to perceived inequities in the legislation.

First, recognition is not provided for financial contributions already being made by specific industries to municipalities. PAC also believes the definition of re-

cyclable materials should be reconsidered. What we should really be addressing is productive waste management. If it can't be recycled, can the material be reused in another fashion such as a source of energy? It seems to us that this opportunity has fallen between the cracks.

We would be remiss if we did not express our concern that the consumer, who ultimately decides whether this initiative succeeds or not, is not part of the economic solution. In the United States, for example, there are thousands of communities operating user-pay programs. These programs, where householders pay for garbage disposal above a certain bag limit, have been very successful in influencing consumer behaviour. Under Canada's national packaging protocol, shared financial responsibility included consumers as well as industry and governments.

We appreciate the opportunity to present our perspective on Bill 90 as it now stands. We recognize that you have differing opinions which you must weigh and reconcile to the best of your ability. We strongly recommend you sponsor a thorough professional economic cost-impact analysis and make it public. We have concerns that many Canadian firms could find themselves at an economic disadvantage, especially to their US counterparts, where no such regulation is being considered. We also recommend that the board of directors be more representative of affected industry sectors, many of which may be paying more than their fair share either directly or indirectly through the supply chain process.

The Packaging Association of Canada supports your efforts and will welcome all opportunities to contribute to the finalization of the legislation. Thank you for being so attentive. We've love to address any questions you may have.

**The Chair:** Thank you very much. That leaves us with just over three minutes per caucus for questions.

**Mr Bradley:** There are some out there who would advance the argument that any packaging that is produced should ultimately be the responsibility of the packager and that all costs to society associated with that packaging should be assumed by the producer of the packaging. Of course the packager would say that would be reflected in the price. How would you react to that contention?

**Mr de Bellefeuille:** If you look at the definition of a package, it's to bring a product to market. Ultimately, the real benefit to a food company or a beverage company is to bring their product to market, and the package is only the vehicle to do that. It's the marketing vehicle. It's maintaining quality of the product and delivering it to a consumer. In our opinion it's not so much should it be the material manufacturer's responsibility or the brand owner's? What we are concerned about is that choices will be made based on specific materials as opposed to the fact that—and we agree with this in principle—some monies have to be returned to solidify the blue box program, for example, or the municipalities' endeavours in collecting solid waste.

**Mr Larry Dworkin:** Just to get back to your question, it's difficult to get milk to the consumer without a package. Without that package, it's not going to get there, or some 15,000 other products you'll find on the grocery shelf. So the package serves a useful function. I guess the question you really should ask yourself is, when the consumer goes to the supermarket they make certain choices. They can purchase certain foods without a package; certain foods, obviously, require a package. You're getting into social responsibilities and so on. But I think that to put it all on the package is sort of a red herring at this point in time. I've heard the argument before.

**Mr Bradley:** It is made repeatedly when this issue comes forward. It is made by some people at the municipal level, it is made by some people who have a very strong concern about the environment and it is made by some of your competitors who, depending on what you define as a package, would agree that that might be the case. In my view, the real problem that brings forward on the front plate of the province is that the municipalities are screaming because the province has withdrawn from the blue box field, which it used to partially fund, and municipalities are having to assume that cost more and more. So obviously they're looking for someone else to play a significant role in that, other than the property taxpayer. Do you feel generally that this bill, with the changes you've suggested, would solve much of the problem?

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**Mr de Bellefeuille:** Obviously, it would strengthen the program with the municipalities. We're all in agreement with that. What we really need to understand before we sign a blank cheque is what this all means, what the consequences are this year, next year and in five years time, and that it is a level playing field. We wouldn't want manufacturers to make choices just based on taxes and certain levies on certain materials. Ultimately, if you really want to get into all the details of glass versus plastic versus metal, they all have their needs and they all have their reasons for existing and they're all recyclable. It's a question of what makes more sense in the box and in the collection. That will naturally find its place.

**Mr Marchese:** There are a number of people who have made one of the comments you made on page 4, which is that the levy on industry is being designed in a way that will tax recyclables rather than the overall waste. You make that point on page 4, where you say that many "would be exempt from paying a levy because their material is either not recyclable or their sales are below a certain threshold." I'm not sure how the government is addressing it, but it is a serious issue that a number of other people have brought to our attention, and I hope the parliamentary assistant will pass it on to the minister.

**Mr de Bellefeuille:** I appreciate that.

**Mr Marchese:** The other point that was raised by Mr Bradley, and which I share, is that the Toronto Environmental Alliance talks about extended producer responsibility, which you call a red herring but I'm not quite sure

I agree with you. You do, on one hand, agree indirectly, because you've reduced the level of packaging. You recognize that at least at a cost level, it's a benefit to you as a corporate entity. So the overall effect is to reduce waste. Obviously the intent is to save money, but there's a recognition that there's a problem, right?

**Mr de Bellefeuille:** Definitely, and it's been heightened with popular demand. I guess everyone in his own right personally would like to see if he can do something to affect the environment. But they have been driven both economically and environmentally. Today you eat your yoghurt out of a small 175-gram container, and to the consumer it doesn't look like anything has happened. But there is 10 years of technology where they've thinned down that wall about 40%. In order to do that, you need specialized chemical people to develop resins that can do it and mould-making people who can actually make a mould that will produce the package. So a lot of those things have happened. Yes, there's an economic end, because packaging is cost driven.

I was told once by a reporter, "You guys over-package." I've been in packaging sales all my career, and I have yet to meet a customer who's asked me, "Louis, I'd love to spend more money on my packaging." It's quite the opposite.

**Mr Marchese:** But I think we both recognize, or at least a number of people recognize, that we've got to reduce, and that the focus of Bill 90, for the critics, is that the concentration is on recycling, which reproduces the same problem, rather than the hierarchy of reduction, reusing and recycling, which is at the end of that hierarchy. The concern of some is that while this is an OK step, we're not getting to the real problem of reduction and reusing.

**Mr Dworkin:** On that issue, we're continuing to reduce the packaging we produce. The metal container you're buying, say, Campbell's soup in is not the same can it was five years ago. They're still looking for ways to reduce the amount of material in that particular can. Similarly, if you're buying bread at the store and it comes in a wrapper, that wrapper is probably half the weight today that it was only two years ago.

Our first R under the national packaging protocol is reduce, and a lot of the achievement under the protocol was through reduction. We do reach a limit, however. For example, if you're filling a glass container with a liquid, it's got to maintain certain strength qualities so it doesn't explode on the filling line. Those are issues that we certainly continue to address, and that hierarchy has not changed for our members at all.

**Mr Ted Arnott (Waterloo-Wellington):** Thanks very much for your presentation. You indicate support for the principles that are inherent in this bill as articulated by the government. Do you support the bill?

**Mr de Bellefeuille:** Definitely.

**Mr Arnott:** Thank you. We appreciate that. You certainly have the commitment of the government to continue to work with you in terms of consultation as this bill moves forward. As you are probably aware, this bill

has only had first reading in the Legislature. There hasn't been substantive debate in the House as yet, and so we still have an opportunity to continue to work with industry and those who are affected by this bill to make modifications that may be required. You certainly have the assurance of the government in that respect.

You deserve credit for your voluntary efforts to reduce the waste stream, and you've quantified that in your presentation. How much of that was consumer driven versus voluntary action on the part of your industry?

**Mr de Bellefeuille:** I was there at the beginning. Actually, very little of it is consumer driven. Unfortunately, consumers usually buy price, not environment. That's been our experience. It was originally driven, if you remember, by the incident in the United States a number of years ago when that barge couldn't land its garbage off Long Island, and every municipality in North America was screaming, "Me too." At that time, our industry specifically met with the then federal Minister of the Environment, Lucien Bouchard, and we set up the whole notion of the packaging protocol, recognizing that something had to be done and that we had to somehow or other reduce the amount of material going to landfill. That was a priority, basically.

Since then, when we have put out specific products that say, "More environmentally sensitive," or "Uses less material," with few exceptions, most consumers don't seem to have gone overboard about it. I like to think back to an old episode of *I Love Lucy* when she had those soap suds and stuff like that. Even when they introduced new environmental products and soap didn't make as many suds, people would keep adding it into their machines because they perceived they weren't getting the same value. Similarly, when they hit the cash register at the supermarket, we experience the same kind of consumer reaction. They love to buy the environment as long as the price is right. So it was a combination, basically, but I think industry really pushed it a long way.

**Mr Arnott:** How much time do I have, Mr Chair?

**The Chair:** You have about one minute.

**Mr Arnott:** OK. You talk about the need for a level playing field for your industry. Other presenters have talked about that too, and I would concur that there needs to be a level playing field in this process. How much of your business volume is based on exports versus domestic sales? Do you have a number in that respect?

**Mr de Bellefeuille:** For total packaging, it was \$2.5 billion of \$12 billion. So approximately 20% is exported.

**Mr Arnott:** That's still a substantial component.

**Mr de Bellefeuille:** It is substantial.

**Mr Arnott:** And it would be affected if the American states don't do this kind of thing?

**Mr de Bellefeuille:** Definitely. We would be at a disadvantage.

**Mr Arnott:** Are there efforts underway in the United States, do you know, to move to this sort of model? We've heard that some other provinces are moving in this direction, and there's even been a complaint that Ontario might be moving ahead first and that might affect

industry sectors across the country. Nothing like this is happening in the United States?

**Mr Dworkin:** With one exception, possibly the state of California. It's the only one. Generally the other 49 states aren't even considering this. We would love to see a level playing field North America wide, including Mexico. We can live by the highest environmental standards anywhere as long as our competitors are doing the same thing. We've set some pretty high standards, and we're ready to take them on. It's just that they're not moving, and I don't think the Bush administration is pushing for environmental anything these days. That's my take on it.

**Mr Arnott:** They will in the second half of their term.

**Interjection:** We'll look out for it.

**The Chair:** Perhaps, gentlemen, that might form part of a future submission you'd like to make to us about how we can continue to protect our environment and protect our manufacturers at the same time by insisting that all packaging sold in this country meet whatever high standards you think are necessary in this day and age.

Thank you very much for coming before us and making your presentation.

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## ONTARIO BAR ASSOCIATION

**The Chair:** Our next presentation will be from Teranet. Good morning and welcome to the committee.

**Mr Steven Pearlstein:** Good morning. First of all, let me introduce myself. My name is Steven Pearlstein, and I'm the chairman of the real property section of the Ontario Bar Association, although you'll see Teranet's name there. I'll explain how that happened. I think I just saw this morning that it also shows me as representing the Law Society of Upper Canada on your list, and that's not right. It's the Ontario Bar Association, although I've had some dealing with the law society.

The relationship with Teranet: I have nothing to do with Teranet. I don't work with them; I have no affiliation with Teranet. The presentation that I'm going to make is, in effect, procedural—how this act is going to work with the conveyancing real estate bar. It became apparent that Teranet's position was very similar. In order to save time, we thought we'd just do one presentation. So although my remarks really are on behalf of both parties, Teranet is the joint venture with the Ontario government that runs the electronic search and registration system for the land registry in the province. There's a certain community of position here.

I'm really here representing the day-to-day lawyers and then, through them, the members of the public who are going to have to deal with this act. I'm not going to deal with any substantive issues. The environmental law section of the bar association will be here later today and will be dealing with the environmental law issues. This is just mostly identifying this environmental site registry that's provided for in the legislation.

This legislation is going to create, in effect, a new register. Something called a record of site condition is going to be filed by the ministry. This record of site condition will have and has the potential for having a significant effect on the marketability, the use, the value of specific parcels of land. It's proposed that instead of depositing this in the existing land registry system, this ministry create a separate registry and deposit it there instead. This causes several concerns for the people that have to use the system. I've got it broken into three headings: duplication, cost and confusion.

Duplication, the first heading: there are something like just under 300 provincial statutes that affect land. I think the last time it was checked it was 284 statutes. You can imagine, if there were 284 separate registries all set up, nobody would know where to look or where to find them. In fact, from the public standpoint, when you're dealing with a piece of land, most people know about the existing land registry system. They know to look there. But if we create this new environmental registry, the public may not know to look there and/or these records may not be found. Presumably, at some point the bar will become familiar with this and have to look there. But there's no need for duplication. You have an existing system. It works well, and it's going to cause a problem if there are more—many more—registries. This is just one of the potentials for many.

That leads into the second area, which is cost. Obviously, from a public standpoint, running two systems is more costly: from staffing, setting it up, learning the system. The government is just spending a significant amount of money in setting up this new electronic registry system for the land registration system. We feel the money would be better spent being put into operating and having users continue to use the electronic system—this is Teranet's main point, I think—rather than spending public money to create another system. Certainly from a user standpoint, from the public standpoint, having to either pay the lawyers or do it themselves—learn how to search two systems and pay the costs of searching in two systems when you have an existing system—it doesn't make any sense. You could just put these records on the existing system, pay to search there and you'd be all set.

From an access standpoint, the government is trying to get open access and electronic access. I noticed in the paper, they're just announcing that they're going to allow access to marriage certificates and drivers' licences over the Internet. The government is spending a lot of money through Teranet to set up electronic access across the province, remote access electronically over the Internet, for this land registration system, and yet now they propose to create a separate registry which will not be electronically registered—or they haven't specified, but based on past experience, it wouldn't be. You'd have to write in and get an answer back, whereas if you use the existing system, it's there and it's readily usable. You put the record on title, and then it can be accessed electronically.

We have some past experience dealing with other ministries trying to set up registries. In my experience—I've got about 25 years' experience—this doesn't work. The Ministry of Revenue tried to have liens for corporation tax arrears set up in a separate system. You had to write a letter to the Ministry of Revenue and find out if there were liens there. It got so unwieldy with lawyers writing constantly for every transaction, trying to get an answer, that they couldn't run the system. They finally threw up their hands in the early 1980s and said, "You know what? We'll just put it on the registry system if we're claiming a lien. Otherwise, don't bother writing us any more. We're getting rid of our separate records." So there is precedent for this creating problems and not working in other ministries. I'm not sure why we propose to do this and not do learn from prior missteps.

The third area, and this is really our main concern, is confusion. Essentially, the way land is identified, this record will be to identify a specific site, a specific parcel of land. That doesn't stay the same. The identifier for a specific parcel of land has changed over the years, and in fact in the last few years it has changed more frequently. So when Lord Simcoe set up in the 1700s, there were these concession lots and you referred to parcels of land through concession lots. Then there were lots and plans. Then there were parcels. Now, you have these property identifier numbers, PINs. So when you have a Ministry of the Environment, they don't necessarily always have the expertise to file in their registry according to the most current system. Some people even just refer to the parcel of land using a municipal address—like 15 Avenue Road or whatever the road number is—which doesn't have any legal effect. We have an example of that with what used to be called Ontario Hydro under the Power Corporation Act. They passed legislation that said they could claim an easement for their power lines, and they don't register it anywhere, so you have to write them.

And what the bar is finding is they don't have as much expertise in identifying the specific parcel. When you write them, they may have filed their record under the concession lot, and yet now that parcel of land is being referred to by some property identifier number. If you write and ask on the current property identifier number, they write back saying they have no record, yet there actually is a concern on that piece of property. So there's a very well-defined registration system that's constantly updated and that's being utilized by the people who have the expertise. We have a real concern here that these records will be filed—not through any malice, but the party filing in the Ministry of the Environment may not have the expertise to properly identify, may not have the information to identify that particular parcel, so they file it by municipal address, road or concession lot number, and then the public can't find it readily. There's a huge concern for confusion here, whereas there's an existing system—why not use it? It doesn't make any sense.

I understand that the Ministry of Consumer and Business Services, which runs the existing land registry system, has expressed some concern with having these

records registered, because they have this view that only documents that deal with an interest in land should go on their system. But that has really been moved away from. There are lots of acts which require documents that don't really affect interest in land. The perfect example is, under the Planning Act, if you register a development agreement or a site plan agreement, which just talks about how the roads and parking are going to occur on a piece of land, those get registered under the existing system now. Airport zoning regulations, land near airports, there are certain regulations as to how those are going to be dealt with. Those are registered in the existing system.

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There are lots of examples where you have a document or a record which deals with a specific site, a specific parcel of land, and it just makes sense that for ease of use, for low cost and for a lack of confusion, it should all be in one system. It's a public record so it's not confidential. The environmental registry is going to be just as available to the public as the registry system. Everybody can look in one place.

I'm confident that, in coordination with the Ministry of Consumer and Business Services, a ministry which I deal with a lot, it's possible to allay their concerns if there's an effort to really look at what's in the public interest here, and in the public interest you don't need increased costs and confusion.

Those are my submissions.

**The Chair:** Thank you very much for those comments. That leaves us about two minutes per caucus for questions. This time we'll start with Mr Marchese.

**Mr Marchese:** Have you had discussions with ministry staff about your concerns, or have they consulted you in advance of this?

**Mr Pearlstein:** There are two ministries. Is this the Ministry of the Environment or the Ministry of Consumer and Business Services?

**Mr Marchese:** Whoever.

**Mr Pearlstein:** The Ministry of the Environment actually were the ones who originally contacted me, because they were concerned over some of this conveying issue. I think the Ministry of the Environment—and this is just my opinion from talking to them—would go along with what the Ministry of Consumer and Business Services would want to do, but that they had been told by the Ministry of Consumer and Business Services that they didn't want these documents registered in their system. As a result of that, I have had some preliminary discussions, but nothing formal, and certainly I don't have a position. I really believe it can be worked out with the Ministry of Consumer and Business Services and that this is in the best interests of the public. I really do believe that.

**Mr Marchese:** Do you have any connection to the Ontario Environment Industry Association?

**Mr Pearlstein:** None whatsoever.

**Mr Marchese:** I'm just reading their suggestions on this. They say this organization "supports the establish-

ment of an environmental site registry for filing RSCs and to allow public access to this information; to ensure that information is readily accessible, it should not be organized solely alphabetically; should be searchable by municipal address, GPS coordinates, owner name, or property identification number as used in the Polaris, the provincial land information system; if RSCs are filed for large portions of land, it should be possible to reference them after the land is subdivided into smaller lots."

**Mr Pearlstein:** That actually just highlights my concerns. They're saying, "We want all these things to be done," and our experience is that the only way to effectively do those things, which we support, is to use the existing land registry system, because you can't file—if you look at the way a lot of the environmental-concern lands are, some RR1 number is a big piece of land and then later on it gets subdivided into different municipal addresses. There's no effective method of bringing that forward and updating those records, whereas with the land registration system that happens automatically. You can go, in the existing system, to a municipal address and it will tell you exactly where to find the proper register for that, whereas with the environmental registry, our experience from this corp tax and the hydro registry is that that just doesn't happen. It doesn't exist.

Second, all of those concerns that he raised, that it's readily identifiable, that you bring it forward to further changes, doesn't happen, but it does happen in the existing system. I completely concur with those submissions, but what I'm saying to you is that our experience is it won't happen unless you put it into the existing land registry.

**Mr Marchese:** I'm sure Ted has the answer for us.

**The Chair:** Thank you very much. To the government side, Ms Mushinski.

**Mr Marchese:** Maybe not.

**Ms Mushinski:** Thank you, Mr Pearlstein, for your submission this morning. Would you by any chance happen to have a written copy of your submission?

**Mr Pearlstein:** I don't, but if you would like one, I will produce it on Monday. How is that?

**Ms Mushinski:** OK. I just want to explore a little bit the future scenario of brownfield remediation. I think what you're saying—and you're speaking on behalf of Teranet, I understand, are you?

**Mr Pearlstein:** Teranet submissions are identical to the ones I just put forward, but I'm not part of Teranet. They've asked me, when I'm here, to also indicate that they support this. Teranet submitted a letter, I believe, that sets out their position, but I'm actually speaking on behalf of the practising bar, the Ontario Bar Association.

**Ms Mushinski:** So you're basically in support of Bill 56.

**Mr Pearlstein:** Yes. I don't comment on the environmental law issues because I don't have the expertise. As I indicated to you, the environmental section will be here later today to give you their position. I'm really commenting on the procedural aspects, and to the extent that

there's a site registry set up that is readily available at a reasonable cost to the public, I support that and the Ontario Bar Association supports that. So we're in favour of that. What we're trying to say is that the way it's proposed to set it up, from past experience and from what we can see, it isn't really the best way it should be done. We're recommending that you utilize the existing system. So that should be changed.

**Ms Mushinski:** OK, that's fine. I don't have any further questions.

**The Chair:** Thank you for coming before us with that perspective this morning.

#### ASSOCIATION OF MUNICIPAL RECYCLING COORDINATORS

**The Chair:** Our next presentation will be from the Association of Municipal Recycling Coordinators. Good morning and welcome to the committee.

**Miss Vivian De Giovanni:** Good morning. We thank the committee for the opportunity to speak on this important issue. We are here today representing the Association of Municipal Recycling Coordinators, the AMRC. My name is Vivian De Giovanni and I am the executive director of the AMRC. With me here today is Janine Ralph, manager of waste policy and planning for the region of Niagara and an AMRC board member. Also here today is Russ Nicholson, chair of the board and waste reduction coordinator at the county of Simcoe.

The AMRC is an incorporated, non-profit organization formed in 1987 by municipal waste management professionals to address municipal waste reduction, reuse, composting and recycling issues. The AMRC does not formulate policy statements as such. We do, however, bring forward the issues and views of our members. The AMRC represents urban and rural municipalities and recycling associations throughout Ontario, comprising approximately 90% of recycling programs in the province. Our members are the people who work every day to deliver diversion programs to the public.

We say all this because it is important to us that the committee appreciate who we are in order to understand our concerns about Bill 90. Our members are generally supportive of the document and acknowledge that this is a potentially powerful tool to deal with waste diversion and help relieve the financial burden currently borne by municipalities. However, we feel there are some details of Bill 90 that should be addressed prior to second reading.

In regard to a statement of intent, the implications of this legislation have far-reaching effects at the municipal level. As the bill reads now, it is really a blank statement that establishes a process for implementing rules, regulations and potential funding and responsibility for waste diversion activities. There is no clear statement of intent that provides a detailed rationale on what the bill is supposed to achieve.

A statement of intent for this bill could, for example, use as its foundation the September 1, 2000, WDO

report. We recommend that a preamble be inserted before definition 1(1) that would establish clear objectives for this legislation. Environmental rationale of conserving resources and reducing pollution, both through avoided disposal and substitution in manufacturing, should be referenced in this preamble.

**Ms Janine Ralph:** In regard to the designation of waste, the bill as it is written appears to designate blue box waste as material that would require the new WDO to develop a waste diversion program. AMRC members would like clear confirmation that the definition of "blue box waste" includes all of the basic and supplementary blue box materials currently noted in schedule 1 of regulation 101/94 under the Environmental Protection Act, and that these materials will be designated as requiring development of a waste diversion program by the new WDO immediately upon passage of the bill. It should also be recognized that blue box wastes as currently defined under regulation do not include all recyclable materials currently collected by municipal programs, and that missing materials should be included via an immediate amendment of schedule 1, part II of the regulation.

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Secondly, while the bill provides for the designation of other materials by the minister in the future, no materials other than blue box wastes are addressed in the bill at this time. Members of the AMRC have spent over five years working with industry to develop a funding program for HHW, or household hazardous wastes. This was both prior to and during the previous WDO process. The September 1, 2000, report submitted by the former WDO to the minister clearly recommended that the cost of municipal HHW programs should be shared on a 50-50 basis between industry and municipalities. AMRC members are continuing to undertake the necessary data-gathering and analysis activities that would support the development of a WDO diversion program for HHW. Either HHW should be included as a designated waste within this bill or the minister should immediately designate HHW upon passage of this bill. Like our colleagues at AMO, we believe the priority for funding should be for blue box and HHW programs.

Municipalities have been without funding support for blue box and HHW programs for some time. AMRC members suggest that the bill include a requirement that funding for a designated material be provided effective the date of the designation to ensure that funding for at least blue box and HHW would be provided for the fiscal year 2002.

Lastly, the bill does not include a clear description of the mechanism by which additional materials will be designated by the minister. Thus it is not clear to us how additional materials such as used tires and compostables will be designated in the future. We do recommend that blue box waste and household hazardous waste, or HHW, be designated immediately and that funding to municipalities be effective as of the date of designation, by the addition of a new clause in section 22 of the bill.

**Miss De Giovanni:** Regarding the clauses related to the members of the board of directors, the bill provides for a board to direct the WDO. Many AMRC member municipalities would like to see an evaluation of the proposed board, as the balance of proposed members is heavily weighted toward industry representatives both as voting members and as observers. The proposed board structure also indicates that additional industry representatives would be added to the board with the formation of the industry funding organizations for designated materials. The question that should be asked is, is the addition of IFO representatives necessary? The addition of too many new industry representatives will further unbalance the board, and may lead to a large and cumbersome board structure.

AMRC members believe the goal should be to create an effective board structure that fairly represents all stakeholders in the process without becoming too large and potentially ineffective.

We recommend:

(1) That prior to second reading of the bill, the proposed structure of the WDO board in subsection 3(2) be reviewed to ensure that a reasonable balance is maintained between industry and municipal membership;

(2) That the proposed addition of industry funding organization representatives to the WDO board as noted in subsection 3(2), paragraph 8, be reviewed;

(3) That the addition of some municipal organizations as observers to the board in subsection 3(3) be considered to assist in balancing the proposed structure, and that the AMRC be considered as one of these observers.

Regarding waste diversion programs, the bill states that Waste Diversion Ontario, in conjunction with an industry funding organization, must come up with a waste diversion program for any material designated by the minister. There appears to be no timeline for the development of a plan and no opportunity for the minister to intervene in the event a plan cannot be agreed upon. We recommend that section 22 include a clause that a specified, limited timeline be applied when developing a waste diversion program for a designated waste. Further, if this timeline is not met, the minister should have the authority under the act to impose a waste diversion program.

**Ms Ralph:** In regard to the issue of the blue box program limit on payments to municipalities, the bill currently indicates in subsection 24(5) that, "A waste diversion program developed under this act for blue box waste shall not provide for payments to municipalities that total more than 50% of the total net operating costs incurred by municipalities in connection with the program." The bill does not clearly obligate industry to pay 50% of municipal blue box program costs, but appears to leave flexibility that industry could pay less than a 50% share, which would result in municipalities paying more than a 50% share.

This is not in keeping with the recommendations in the September 1, 2000, WDO report, which were: (1) that industry should provide financial support equal to 50% of

the aggregate provincial net costs of municipal recycling programs; and (2) that funds provided to municipalities through the WDO should be calculated on the basis of the municipal funding allocation model developed by the WDO.

A considerable amount of work has been undertaken by the former WDO on developing a cost allocation model to determine levels of funding to municipalities. This model is based on industry providing 50% of the net aggregate municipal blue box program costs and encourages municipal programs to exceed their diversion goals by potentially providing some programs with more than 50% funding depending on their program performance.

In subsection 24(5), the word "operating" should be changed to "net" costs that would include annualized operating, capital and administrative costs.

Lastly, the bill should also be clear that the fees under subsection 29(3) of the bill to cover off the administrative costs for the WDO, the industry funding organizations and the ministry are not to come out of the 50% funding to be provided to support municipal programs.

We recommend that subsection 24(5) be amended to read, "A waste diversion program developed under this act for blue box waste shall provide for payment by industry of an amount equal to 50% of the total net costs incurred by municipalities in connection with the program."

In regard to the definition of "steward" in the bill, the definition of the word "steward" is unclear, as it is described only as a person having a "commercial connection" to the designated waste or product from which the waste is derived and it is open to wide interpretation. If a municipality is obligated by law to collect and dispose of a particular waste, it could be construed that they have a "commercial connection" to a designated waste and could be interpreted therefore as being a steward. We do not believe that is what the bill intends.

We recommend: (1) that a steward should be defined as the "first seller" of a product or material in Ontario; and (2) that the bill should state that a municipality cannot be a designated as a steward.

**Miss De Giovanni:** Regarding the clause on voluntary contributions, the bill states that a steward designated by an industry funding organization may make voluntary contributions of money, goods or services to the organization. This clause is unclear as to the reasons for granting exemptions. In the past, when an industry has made in-kind contributions, these have not always adequately reflected true cost sharing. AMRC members do not want voluntary contributions to municipalities that are of no great benefit in lieu of getting real dollars needed to deliver programs.

We recommend: (1) that in subsection 30(2) a clause be inserted that states that voluntary contributions must realistically reflect equal value to the amount of funding that the money, goods or services is replacing; (2) that a clause should be added or an amendment should be made to subsection 30(3) that provides for approval by the

WDO board of the terms and conditions of a voluntary contribution, since the loss of funding for a designated waste will directly affect the waste diversion program developed by the WDO.

**Ms Ralph:** In regard to the proposed WDO and IFO organizational structure, the bill currently proposes the implementation of a complex organizational structure to fulfill the requirements of the bill. This proposed structure would have the WDO developing programs to divert designated wastes, and a number of industry funding organizations formed to implement these programs and deliver funding to the municipal components of these programs. The potential level of bureaucratic duplication and complexity of this proposed system concerns many AMRC members.

The structure envisioned by many participants in the previous WDO process, including AMRC members, was that the WDO would develop and implement the diversion programs and collect the information required to determine the annual industry funding requirements, and that the IFOs, or industry funding organizations, would be formed primarily to collect the funds from industry. Once these funds were forwarded to the WDO, the WDO would be responsible for administering the payments to municipalities.

Municipalities are concerned that under the proposed structure they will have to deal with multiple annual requests for program information, multiple funding submissions, and more than one industry funding organization for each material type that is designated.

We recommend: (1) that the proposed structure for distribution of funding to municipalities as set out in the bill be evaluated prior to second reading. A more streamlined approach would reduce the complexity and duplication that could result by the passage of the bill in its current form; (2) that if the results of the evaluation continue to support the proposed structure, the bill include a clause that states that only one industry funding organization be formed for each classification of designated waste; that is, only one IFO for blue box wastes, one for household hazardous wastes, and one for each additional material that is designated.

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In conclusion, we do feel it's important to note that the bill only addresses the diversion of material. It does not currently deal at all with material that will not or cannot be diverted but still has to be and will be collected and disposed of by municipalities. Also, it does not address the environmental costs associated with throwaway products. Based on this bill, altering a package from a recyclable material to a non-recyclable material would exempt the producer from any responsibility to fund the proper management of this material.

That said, we also feel that, if used appropriately, this act can become a powerful tool for industry stewardship and funding. It does provide the necessary conditions for "backdrop" legislation to create a level playing field where all industry players in a given material sector have

a legal obligation to participate and contribute to the fund.

The success of the bill in supporting waste diversion efforts will lie in how the act is interpreted and what plans are actually established. The AMRC is concerned that there are many details of Bill 90 that should be amended or reviewed very carefully prior to second reading.

Again, thank you very much for the opportunity to comment on the bill. Your time and attention today is greatly appreciated.

**The Chair:** Thank you very much. That leaves us just about a minute and a half per caucus for questioning.

**Mr Arnott:** Thank you very much for your presentation. I found it insightful, thoughtful and very constructive. Certainly, as recycling coordinators, you should have a big say in what happens with this bill because you are the experts in terms of the municipal recycling end of things.

I'm pretty confident that some of the concerns you've expressed can be addressed as we move forward, and I'm hopeful that's the case. This is an early, preliminary process that we're in right now—first reading of the bill and referred to a committee. So we will have opportunities to address some of these things.

You talked about the members of the board of directors and you made a general statement saying that your members believe the goal should be to create an effective board structure that fairly represents all stakeholders in the process without becoming too large and potentially ineffective. I think we would all agree that that would be desirable. How large is too large?

**Ms Ralph:** It depends on who you ask. From experience in dealing with multiple boards—for example, boards of management in siting landfills—you can reach the point where you cannot make effective decisions because you have too many members with too divergent interests, frankly. We recognize that it may not be possible to get to the point where you have 50% representation from both sides of the equation. However, it should be a fair structure and it should be as fair as possible, which is where we are concerned, for example, with the addition of additional industry representation in the future, which would create a very dramatic imbalance, frankly, where at some point in time the municipal voice at the board would be very small. That's one of our primary concerns.

**Mr Bradley:** I certainly share your concerns about the municipal representation and it being weighted in favour of the industries which are represented. I'm also concerned, as you appear to be, about the possibility of people converting from a recyclable container to a non-recyclable container, and who is in the game and who is producing waste and the fact that it appears to deal with those who are in diversion instead of those who haven't made the same effort in diversion.

Would you think that an assessment against those who are providing something that doesn't meet the 3Rs would

be reasonable, so that they could contribute to this fund as well?

**Ms Ralph:** That probably goes beyond the current intent of the act. We recognize it as being a potential problem once the act is implemented or once the bill is implemented. I think part of that issue could be assuaged by ensuring that the group of designated materials referred to as blue box wastes is as currently comprehensive as possible to fold in the majority of packaging that can be potentially recycled.

Our concern as municipalities is that every material that a given municipality collects in its program should be funded. There are programs that only collect five or six material types because they've made a choice not to collect certain materials which are very expensive to collect and process and for which there are minimal markets. Other municipalities have chosen to collect every possible material, knowing that they're going to spend more money but provide additional diversion efforts. So I think the key is to address the issue of in fact pulling in as many of the viable material types as possible at the outset.

**Mr Marchese:** I would just thank you for all the comments that you make and say to you that the comment you made in your conclusion, "Altering a package from recyclable material to non-recyclable material would exempt the producer from any responsibility to fund the proper management of this material," is something others have raised. I'm convinced Ted Arnott is listening, as are the Chair and others, and that they will have to address it in their bill.

Secondly, in your point re proposed WDO and IFO organizational structure, this government is so concerned about red tape, as you know, that they wouldn't want to contribute in any way to an increase of red tape. I'm sure they will take this into account when you say, "Municipalities are concerned that they will have to deal with multiple annual requests for program information, multiple funding submissions and more than one IFO for each material." So again, for a government that's concerned about red tape, I'm sure they will address that one.

**Voluntary contributions:** I support your second recommendation, which says, "A clause should be added or an amendment should be made to section 30...that provides for approval by the WDO board of the terms and conditions of a voluntary contribution, since the loss of funding for a designated waste will directly affect the waste diversion program..." So I support that one over your first recommendation. Other people have commented on that as well, by the way.

The concern about the blue box program limit on payments: a number of people have spoken to that. They want clear language on 50-50. I'm not sure, and Ted Arnott, the parliamentary assistant, hasn't commented on this, why they haven't used the language that was proposed by the WDO and its proposed variant. Hopefully they will get back to it. Others have talked about it. Ted has been very complimentary of all the submissions

people have made, and this is one of the comments that most have touched on, so I hope they will listen to that as well. Thanks for your submission.

**The Chair:** Thank you very much for coming before us here this morning.

## MUNICIPAL WASTE INTEGRATION NETWORK

**The Chair:** Our next presentation will be from the Municipal Waste Integration Network. Good morning. Welcome to the committee.

**Mr Todd Pepper:** Good afternoon, Mr Chair and members of the committee. My name is Todd Pepper. I am president of the Municipal Waste Integration Network, or MWIN. I'll let my colleagues introduce themselves.

**Mr Arthur Potts:** My name is Arthur Potts. I chair the government advocacy committee of MWIN and I'm a principal of Municipal Affairs Consulting.

**Ms Maryanne Hill:** Good morning. My name is Maryanne Hill, and I'm the new executive director of MWIN.

**Mr Pepper:** MWIN was formed four years ago to be the voice and resource for municipal waste management and minimization in Ontario. Our members are primarily the senior administrative and program staff of Ontario's municipalities, together with our contractors and consultants, and who, with the approval of our respective councils, design, implement and deliver the waste management programs in Ontario's municipalities. While I'm president of MWIN, for example, I'm the general manager of the Essex-Windsor Solid Waste Authority. We deliver the waste management programs for the city of Windsor and the county of Essex in southwestern Ontario.

As you can imagine from that, Bill 90 is very close to the hearts of our members, as we work every day in the field providing waste management programs to over 75% of Ontario's population.

Two years ago, MWIN was selected by the Association of Municipalities of Ontario, from whom you heard last Friday, to provide technical assistance to their political representatives on the original Waste Diversion Organization that was established by the Minister of the Environment, the Honourable Norm Sterling, back in November 1999. Almost 100 of MWIN's members committed countless hours to the committee and subcommittee work of that original WDO organization, and we contributed significantly, we feel, to the report from the WDO that was delivered to Minister Newman on September 1, 2000, which I'm sure you're all aware of. It is our familiarity with the WDO process that brings us here today.

While we support wholeheartedly the intent of Bill 90 as you have it before you today, and while we encourage its speedy passage through the Legislature, there are a few details, as others have presented to you, that we feel need to be addressed before it moves to second reading.

I'll go through those subsection by subsection if I can, Mr Chair.

Our first comment is to subsection 1(1), or the definitions section. I believe our comment is very similar to the comment you just heard from the Association of Municipal Recycling Coordinators. We're asking that the definition of "blue box waste" be expanded to include both "basic and supplementary blue box waste." Why we're asking that is that currently regulation 101/94 to the Environmental Protection Act defines "blue box waste" as "municipal waste that consists solely of waste in one or more of the categories set out in schedule 1" to that regulation.

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Schedule 1 provides for two types of blue box materials: basic materials, which you're familiar with as the newspapers, the tin and aluminium cans, the glass; and then there's a supplementary list of materials that provides municipalities with an option, as my colleagues from AMRC mentioned. Some municipalities collect a wide variety of materials off the supplementary list, and some collect the basic two materials off that supplementary list. By expanding the definition, we believe the bill will now provide coverage for all materials currently collected in Ontario municipal blue box programs.

The second subsection of the bill that we would like to speak about, as you can imagine, is subsection 24(5). This is the most important issue to municipalities in Bill 90, the level of industry funding for waste diversion programs that are implemented through Waste Diversion Ontario that's proposed to be established by the bill. The recommendation from the former WDO was very clear on this issue. Recommendation 7 of that report stated, "Industry should provide financial support equal to 50% of the aggregate provincial net costs of municipal recycling programs." I emphasize "equal to" and "net costs" in that recommendation.

That resolution was unanimously approved by all industry and municipal representatives on the funding and regulatory committee of the previous WDO. It was then adopted unanimously by both the municipal and industry representatives on the board of directors of the WDO. Yet Bill 90 in its current form does not incorporate this recommendation from the voluntary WDO. The only reference that we can find in the bill to a 50% is found in subsection 24(5) of the proposed act. However, the subsection as it currently reads refers to money that is to be distributed to municipalities, and not the contribution by industry. We believe the regulation of the distribution of the money to municipalities is not required.

The Association of Municipalities of Ontario, whom you heard from last Friday, my colleagues at the AMRC, whom you just heard from, and MWIN over the last several years have developed a funding model that we propose to provide to the new Waste Diversion Ontario, when it's established by this bill, that will equitably distribute industry funding to Ontario's municipalities. The funding model will support the waste diversion

initiatives of Bill 90 by providing incentives to municipalities to add more recyclables to the blue box program and to divert more waste from landfill sites into waste diversion programs.

Therefore, we propose for your consideration the following rewording of subsection 24(5): "A waste diversion program developed under this act for blue box waste shall provide for payments to municipalities by the industry funding organization that equal 50% of the total net costs incurred by the municipalities in connection with the program."

Why we use "net costs" instead of "operating costs" as set out in the current bill is that in the municipal budgeting world, "operating costs" has an association that applies typically to things like fuel, labour, benefits, insurance, but it doesn't capture the capital costs to deliver waste diversion programs. In your communities, you know there are trucks driving up and down streets to collect blue boxes. Trucks in a municipal budget are capital projects. The recycling centre is a capital item. The equipment inside the recycling centre is a capital program. So when we're talking a net program cost, it includes the trucks, the fuel, the recycling centre, the equipment in the recycling centre, the person who drives the trucks and the people who work in the centre, so that it's all-encompassing. This is why the previous WDO and we are suggesting to you that the words "net cost" rather than "operating cost" be used in the bill.

Next, we're suggesting that you include a new subsection in the bill. We've called it subsection 24(6); I'm sure the drafters of the bill will come up with their own number. We're proposing that that subsection deal with household special waste. These are the materials—typically waste oil, used paint, pesticides, fertilizers, antifreeze, those types of materials—traditionally described as household special waste.

There were extensive negotiations between municipalities and that sector of the industry for some time, and they independently came to agreement to provide 50% funding for household special waste. That recommendation was recaptured in the September 1 WDO report to the minister. We're asking you to capture it in the current Bill 90 by essentially adding a new subsection 24(6), which would read, "A waste diversion program developed under this act for household special waste shall provide for payments to municipalities from industry funding organizations that equal 50% of the total net costs incurred by municipalities in connection with the program." Essentially, it is the same wording we've suggested for subsection 24(5), but geared toward household special waste.

Our last comment this morning is related to subsection 31(1), or the funds section of the regulation. Municipalities are very concerned about the timeliness of the implementation of this bill. We encourage you to get it through the House as soon as possible, with the implementation of waste diversion programs and its associated funding by each industry funding organization under subsection 31(1) of the act—and these are the words

we're asking you to add to the end of the existing subsection—"commencing as of the date the waste is designated."

We would suggest to the committee that they encourage the minister to designate through regulation both blue box waste and household special waste as of January 1, 2002. Municipalities are currently in their budget cycles for their 2002 budgets. We need certainty that funding from industry will be there in fiscal year 2002. Each year of delay is costing Ontario municipalities \$20 million to \$25 million in local tax dollars, as they continue to pay 100% of the costs of Ontario's waste diversion programs.

We appreciate your time today. The three of us are here to answer any questions you might have. We encourage you to proceed with the early passage of this act to promote the reduction, reuse and recycling of waste in Ontario.

**The Chair:** That leaves us just under three minutes per caucus. This time we'll start with Mr Bradley.

**Mr Bradley:** There are a lot of good suggestions here. I can understand the concern of the municipalities about the funding formula, because when you're establishing—in this case, most municipalities won't be establishing it; it's putting in additional capital. That is going to be a problem.

How to ease the mind of the Minister of the Environment? What kind of mechanism would you propose to ensure that those funds which are designated for capital for the purposes of the recycling program, for instance, go totally to that? Because they'll say, "Those municipalities will want to use those trucks for something else or the equipment for something else or the building for something else." What kind of audit would you propose for that to ease their minds?

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**Mr Pepper:** Of course, through the Ministry of Municipal Affairs and Housing there is a new financial information report that municipalities now are required to provide. There of course are also new benchmarking initiatives and performance measurement initiatives that are contained as part of the annual municipal FIR. Within those there are specific performance measurement criteria for waste collection and for waste diversion, including recycling programs. So I think, Mr Bradley, it would be captured within the financial information report that's already in place in Ontario's municipalities.

**Mr Bradley:** At one time the provincial government provided some significant funding for the blue box program, for instance. It now appears as industry 50%, municipalities 50%, and you're not even certain—I know there are some problems about what does 50% really mean, and you've been very clear on that.

Do you think there is a role the provincial government could play in terms of funding not necessarily operating, because we understand operating costs, but in terms of capital costs, in terms of providing information—although, heaven forbid, we don't want yet another provincial government program of ads on the television set or pamphlets from the Premier, but I'm talking about

basic information. Do you see a role for the provincial government in that regard?

**Mr Pepper:** In 1986 and 1987, when most of Ontario's waste diversion programs started, that provincial funding, particularly for capital, was very important. It essentially got the infrastructure in place today that we have in Ontario's municipalities. Over time, of course, many municipalities have moved to have private sector contractors, for example, provide recycling services. So when a private sector contractor is providing a price to a municipality, \$50 a household to collect recyclables, that \$50 includes all of the private company's trucks and capital equipment etc.

What we're concerned about is that if a municipality is still delivering its own program and its operating costs, for example, are \$30, it may very well have a capital cost of \$20 per tonne that would not be reflected in that definition of operating cost. So it's just to level the playing field between the private sector operators, particularly in recycling, versus those municipalities who currently deliver the program themselves, so that they're both capturing capital within the overall cost of delivering the program.

**Mr Potts:** The municipalities have been very clear that whether it's a provincial taxpayer or a municipal taxpayer, some relief has to be given. So municipalities want to control the direction of how they run their programs as much as they can, and introducing another level of government funding probably doesn't solve the problem. The key here is to get industry to take its responsibility for materials that it is producing and make the contributions for a program that, since it was initially started, in great vision to the government at the time, hasn't lived up to its operating funding expectations. Now it's time for industry to step up, not additional taxpayers' dollars.

**Mr Marchese:** I forgot to mention to the other group that I also agreed with their suggestion of inclusion of household special waste. You touched on that as well. Of interest is that municipalities and industry had a working agreement on a 50-50 funding formula.

**Mr Pepper:** That's correct.

**Mr Marchese:** There was an agreement. It's not as if somehow they had opposed it. So it's a curious thing that somehow this isn't part of their mandate. Do you have a sense of why? Have the ministry staff talked to you or the political staff talked to you about this?

**Mr Pepper:** Yes, I have had the opportunity to talk to the staff at the ministry. I'm not sure that they had a sense of comfort that there was a consensus, but over the last couple of weeks I think they have developed that comfort, both in talking to the municipal sector and the industry sector, that there is support for 50-50 funding for household special waste. I hope the ministry staff would in the next draft of the regulation advance that, particularly as you're hearing today from ourselves, from the AMRC, and I believe you heard similar comments from the industry last week.

**Mr Marchese:** Ted is listening very attentively, as you'll notice, on his side. I'm sure they will bring that back to the table.

One of the criticisms of the Toronto Environmental Alliance is that in terms of the hierarchy of reduction, reusing and recycling, this Bill 90 focuses much on recycling, which is a continuation of the problem rather than dealing with the other aspects of reduction and reusing or even dealing with compostable material. I suspect you might say that this is a good step, obviously, in terms of that process so that until we get to the others this is something that is supportable, obviously.

**Mr Pepper:** Ontario's municipalities continue to provide programs on the other 2Rs. We don't stand just on recycling programs. Certainly our staff and the members of the Municipal Waste Integration Network are providing waste reduction and reuse programs every day through public education, staff in the schools, speaking to community groups. So we do that every day, as well as also operate recycling programs and programs to collect household special waste etc. So we haven't lost that focus of the 3Rs.

The real issue here is that municipalities are paying \$40 million to \$50 million a year in assessment tax dollars to provide waste diversion programs, particularly the recycling programs. We think, as Arthur mentioned previously, it's time that industry provide part of that funding.

**Mr Miller:** Thank you very much for coming before us today. Certainly, as you mentioned, a number of groups are making it clear the funding is 50-50 between industry and municipalities.

My question has to do with the net costs versus operating costs. You said net costs include the capital costs of the recycling centre and the trucks etc. Are you assuming then that the municipality owns the recycling centre? What happens in the case, as in my riding, where they're privately owned? This past week I toured the recycling plant in Bracebridge and the composting plant. I guess I would want to make sure there wasn't a bias against the private operators.

**Mr Pepper:** Thank you, Mr Vice-Chair. What we're trying to do is level the playing field between municipalities which deliver the program themselves versus municipalities who contract the service, such as in your particular riding. There's a mix, of course, as you can imagine, throughout Ontario. Some municipalities provide all of the infrastructure, the trucks and the staff etc, to deliver the waste diversion program in their municipality, whereas another municipality will have a private sector contractor.

I used the reference before: let's say the private sector contractor, because the service is being delivered as a municipal service but is privately contracted, is charging the municipality, and I use an example, \$50 a household. In that \$50 will be capital costs for the private sector trucks, the private sector's recycling centre and equipment etc, as well as their operating costs: their

drivers, their fuel, their insurance, and those sorts of things.

On the municipal side, if we use the word "operating," if you understand municipal budgeting, there's an operating budget and there's a capital budget. Those trucks and the recycling centre will be over here in a capital pot, pool of money, and the operating costs will be over here in another pool: the drivers, their salaries, their wages, their benefits, fuel for the trucks etc. So by using the term "net cost" you level the playing field between the municipality which provides it, for example, with CUPE workers or whatever, and the municipality which chooses a private sector contractor to deliver the service for them. If you use the word "net" instead of "operating," you level the playing field and you don't prejudice either one.

**Mr Arnott:** Do we still have time?

**The Chair:** No, we don't, I'm afraid, Mr Arnott.

Thank you very much for your presentation. We appreciate your coming before us here today.

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#### ONTARIO BAR ASSOCIATION, ENVIRONMENTAL LAW SECTION

**The Chair:** Our next presentation will be from the Ontario Bar Association, environmental law section. Good afternoon. Welcome to the committee. Please proceed.

**Ms Rosalind Cooper:** My name is Rosalind Cooper. I'm appearing on behalf of the Ontario Bar Association, environmental law section. I'd like to briefly introduce my colleagues as well. To my left is Dianne Saxe, and on my right are Janet Bobechko and Katherine van Rensburg. They'll be assisting with any questions you might have at the conclusion of our submission.

We're making our submission today on behalf of the environmental law section of the Ontario Bar Association. As a background, this section is comprised of over 500 lawyers who devote some or all of their practice exclusively to the area of environmental law in the province of Ontario. For the purposes of our submission today, we would like to focus on a specific aspect of Bill 56 which we believe is critical to the success of this legislation in actually achieving its objective, which is to encourage the development of brownfields.

Based on our extensive discussions and analysis, the failure of Bill 56 to distinguish between the protection afforded to polluters and non-polluters is absolutely critical. It's our view that non-polluters need to be provided with enhanced protection from liability in order for this legislation to be successful.

Prior to providing you with our recommendations, which we've limited to three for today's purposes, we want to explain our expertise and the perspective that we, as environmental lawyers, bring to this issue.

Since 1990, we've had in place environmental laws that impose financial liability and responsibility for contaminated lands on a broad range of parties. Our

system is supposed to be based on the polluter-pay principle, but in practice it's become a situation where it's a search for deep pockets. This is because of the wording of the legislation, which imposes liability on any person who might be connected with contaminated lands.

The result of the wording of the legislation is that we, as environmental lawyers advising our clients, are compelled to warn prospective purchasers and developers of brownfields that in acquiring or developing such lands they could be subject to environmental liability. The result of this advice has had a chilling effect, in that many owners and developers of brownfields will not become involved with such properties. All of us practising in this area, and my colleagues here today, have encountered numerous examples of this situation and could advise you of situations where potential purchases of contaminated sites have not proceeded because of the potential liabilities.

We believe that the current version of Bill 56 takes important steps in dealing with some of these liability issues. But as environmental lawyers regularly advising clients in these matters, we can tell you that it simply does not go far enough. We have carefully reviewed and analyzed Bill 56, and we've concluded that, notwithstanding its positive aspects, the cautions we currently issue to clients who are acquiring and developing contaminated sites will not change sufficiently to promote the development of brownfields as a result of Bill 56. In our view, we still have to advise clients that the moment they acquire a contaminated site, even if they do everything reasonable to investigate and remediate the property, they will continue to be exposed to liability for historical environmental conditions.

What can we do to ensure the legislation actually works and achieves its objective? Again, we believe the most important deficiency of Bill 56 is the failure to distinguish between property owners who have caused pollution or historically occupied the contaminated sites, and developers or new owners who have not caused or contributed to the environmental condition of the property. I'm going to refer to these latter parties as innocent parties. We believe these innocent parties have to be encouraged to come forward and acquire and develop brownfields. In our view, the only way to achieve this objective is to provide these innocent parties with enhanced protection from liability. We also believe this can be achieved through a handful of small amendments to Bill 56 that do not fundamentally alter the policies and principles behind the bill and that will achieve the objective of revitalizing contaminated lands.

We have three recommendations to put forward for your consideration that we believe will provide the necessary protection to actually encourage parties to become involved with brownfields. All the recommendations, again, focus on the innocent owner, and we have defined the innocent owner as a party at arm's length from any party that caused or contributed to contamination at a site or at arm's length from any owner, occupant or party with charge, management or control of the site.

The first recommendation we would like to put forward is that Bill 56 must provide protection to an innocent party prior to filing a record of site condition. Currently, the way Bill 56 works is that protection is only obtained once a record of site condition is filed with the Ministry of the Environment. Given that this document is only filed once the remedial work at a site is completed, a party that acquires the site is exposed to liability from the time of acquisition until they file the record of site condition.

When we as lawyers advise clients of this, they don't want to purchase these lands and incur that exposure to environmental liability during the investigative and remedial phase of the work. Therefore, our first recommendation is that Bill 56 must provide the innocent owner with protection from liability from the moment they acquire the land for a period of two years. We believe that a mechanism such as filing a notice of intent to file a record of site condition could easily achieve this objective. We are also suggesting a two-year period, because this would parallel the provisions found in Bill 56 that are applicable to lenders and municipalities. In essence, it would parallel those provisions.

Our second recommendation, again hinging on the innocent owner, is protection against all ministry orders upon filing a record of site condition. Currently, Bill 56 as written only provides protection from orders that pertain to the subject site. We believe that protection from orders relating to historical off-site contamination is critical to encourage parties to acquire and develop contaminated lands. We still expect that such parties have to address and remediate current discharges from the site and that they are obviously liable for any new contamination or condition they create. It is important to note that in making this recommendation we believe that in the absence of an innocent party that is acquiring the contaminated site in the first place, the ministry would not be able issue an order against that party at all. Therefore, we believe that providing protection against orders relating to historical off-site contamination does not deprive the ministry of an enforcement tool it would otherwise have against that party, but it is critical in encouraging that party to undertake the remedial work and the development of brownfield sites.

Our final recommendation relates to non-statutory or civil liability. We as lawyers are increasingly seeing private litigation in the courts over contaminated sites. This continues to be a significant concern for our clients who are considering the acquisition and development of brownfields. Although Bill 56 provides protection from ministry orders, we will still need to advise them that they nevertheless could become a target of a civil claim even after they've cleaned up the site and filed the record of site condition.

It's our belief that an innocent owner should not be liable for any claim by a third party, provided certain conditions are satisfied. Those conditions are that the owner did not cause the contamination, they've remediated the site and they ensure there's no further

discharge of contaminants from the site. As such, the legislation should specifically state that an innocent owner who meets these conditions, upon filing a notice of intent to file a record of site condition, will not be subject to any ministry order or any civil tort claim by any third party based on historical discharge of a contaminant from the site.

We believe this recommendation will not result in the exemption of any responsible party from liability, and does not deprive any third party of its rights against a responsible party. Again, if the innocent owner never acquired the site to begin with, the third party would not have a right of action in any event. Also, the party would still be liable for current discharges or new contamination which they create.

In conclusion, we believe Bill 56 will not achieve the objective of encouraging brownfield redevelopment if the concerns we have identified are not addressed. We also believe these concerns can be addressed without significant changes to the structure, approach and overall policy objectives of the bill. We believe that unless these concerns are addressed, we will be forced to continue to advise our clients of the exposure that comes with the acquisition of these sites. This will undoubtedly continue to discourage the development of brownfields and undermine the true objective of Bill 56.

We would be pleased to answer any questions you might have.

**The Chair:** That affords us just under two and a half minutes per caucus. This time we'll start with Mr Marchese.

**Mr Marchese:** I appreciate the deputation. We have heard much of what you said from many deputants. Presumably they sought legal counsel as well before they came here. I'm not quite sure.

**Ms Cooper:** Probably so.  
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**Mr Marchese:** But they're still very similar. So I suspect the government will have to address these matters; otherwise the liability questions will, I think, prevent many from developing the sites. That was my sense. Although a number of deputants made the case that in spite of it they still are likely to get involved in the development of brownfields, I'm not sure.

**Ms Cooper:** We're a bit sceptical about that. Again, in our position, providing the advice and having seen numerous situations where parties have walked away from brownfield sites because of the legislation, we believe those changes are critical to it success.

**Mr Marchese:** Right. You're the only ones who talked about putting in conditions, which I find useful; that is, that they did not cause it—I think they might have mentioned that; have remediated the site—I'm not sure they mentioned that; have ensured that there is no further discharge of contaminants. I think those are useful conditions to put in. With that, I think the government ought to be supportive of the kinds of things you've addressed and other people have raised as well.

**Mr Kells:** Part of Mr Marchese's speech I could have given. I thought he nailed it right on.

**Mr Bradley:** We like your daily post in the Toronto Star.

**Mr Marchese:** I do too.

**Interjection:** I like Bob Hunter.

**Mr Kells:** They only publish them if they're negative to the government, so I haven't been writing lately, boys. Anyway, I'm sorry to get off topic.

Actually, you've hit the nail on the head. You've encapsulated what we've heard from a number of groups in various ways. In our own briefing of the bill, I think that we have discussed your concerns and, although I can't speak for the minister or the ministry at this time, I think it's safe to say that they'll get a thorough review and your concerns will be taken into very serious consideration. As you say, if you can't advise people to get into the redevelopment of brownfields, then we haven't achieved what we're trying to achieve. It also follows that if the legislation isn't sound, then we're going to be back into more legislation, or litigation anyway, related to the legislation. So thank you very much. It's bang on from my point of view.

**Mr Bradley:** It was interesting to note that I read into the Hansard the Toronto Star article by Dianne Saxe about the potential for problems with this legislation. I was hopeful that the government had, as they always do, followed that Hansard carefully to determine what the problems are. You have today, of course, elaborated upon those, which is very useful.

There are two former environment ministers on this committee right now, and both would understand, if not necessarily agree with, the desire of the Ministry of the Environment to find somebody with deep pockets to deal with these matters. Otherwise, the grateful taxpayer, if we cannot find the original owner of the property who is responsible for the polluting, will end up paying for off-site pollution. I have some sympathy for that view, though I think the compelling arguments you have made probably override those.

My question would be, what obligation—and someone else asked a question or made a point about having information available to prospective buyers—should a prospective buyer have when purchasing a property such as this? How should that person be able to get the information about the contamination that might be in the property?

**Mr Marchese:** Buyer beware, right?

**Ms Cooper:** I'm going to ask Dianne to respond to that question.

**Dr Dianne Saxe:** At the moment, there is a common-law responsibility, and someone who doesn't disclose contamination of which they have knowledge runs a very substantial risk of being sued. Obviously, this isn't good enough. You're probably aware of the case that started all of this almost 20 years ago now where the municipality wouldn't disclose, the ministry didn't disclose, and the owner very carefully concealed the contamination so as to stick the purchaser with the hazardous waste site.

One of the things the bill would usefully create is a registry for records of site condition. One of the things

that might also be on there—I brought a sample of a notice of intent to remediate. This is the one that is used in Pennsylvania, which I could leave for members of the committee if you'd like to see it. This would also be on the registry, and it starts off with a list of what's on the site. So in order to get any kind of protection, you first have to disclose what's here based on a reasonable examination, and that has to be available to the public generally.

I think we all agree that people need to know what's on the site, within the limits of current science. To date that hasn't happened, and there is no workable structure to date to have access to information. So that part of the bill I think would be a considerable improvement.

**Mr Bradley:** The other point I would deal with is the difficulty sometimes in determining what is historical contamination and what is new contamination. How do we ever solve that problem?

**Ms Cooper:** Janet, do you want to address that?

**Ms Janet Bobechko:** Sure. I guess it is a difficult question to distinguish between the two, and as science progresses maybe we'll be able to make that distinction. Obviously, if it's a similar use on the site, that's more difficult. If they were different historic uses, the question might be more easily answered.

I think we would take a look at it and say that if you can't distinguish between parties of similar uses, then they may all be potentially responsible, but that still doesn't deal with the innocent party who did not contaminate. They are using it for a completely different purpose, for redevelopment purposes, as opposed to a continuing commercial or industrial use.

**Mr Bradley:** Is that my time up?

**The Chair:** It is indeed. That is our collective time up.

Thank you very much for taking the time to make a presentation before us here today.

With that, committee, we've hit the end of our time. I would remind everyone we're on a pretty tight time frame to make it to Brantford for the resumption of our hearings in that fair city at 2:40 this afternoon. The committee stands recessed until 2:40.

*The committee recessed from 1237 to 1440 and resumed in the Best Western Brant Park Inn, Brantford.*

**The Chair:** I'll call the committee back to order as we resume our hearings today on Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters; and on Bill 90, An Act to promote the reduction, reuse and recycling of waste.

It's my understanding we've swapped positions. First up will be the mayor, Chris Friel.

#### CITY OF BRANTFORD

**The Chair:** Good afternoon and welcome to the committee.

**Mr Chris Friel:** Thank you for the opportunity to speak today. The city of Brantford has been involved in an agenda of brownfields for the last four years. We

started a committee in 1997-98 to deal with a large number of properties that we have in this community which have caused us some difficulty.

The first property was industrial in the 1860s through the 1880s and then stopped operating in the 1970s or 1980s. We had recognized that there were very large parcels of land in this community, in the middle of residential areas, generally, which had literally achieved a Wild West frontier kind of feel. We were no longer collecting taxes and nobody was assuming responsibility for them. Whoever wanted to go into these buildings and set up business did, and they continue to do so even today. There are businesses operating in brownfield sites probably across this province where there is no ownership. They are not paying taxes and they are operating probably with very little regard for any other laws that are going on currently. I've found this is quite a problem for us but it's not uncommon, having spoken to a number of mayors across communities in Ontario, and it has proved to be very frustrating.

Our issues are pretty specific. We have as a community moved forward. First of all, we've set aside money. We've already expended probably over \$800,000 now to deal with brownfield legislation property. We've been hunting down properties to determine who owns them so that we can go after the owners, one of which will turn out to be the province of Ontario, and we'll see your property very shortly that we're about to demolish.

We have been dealing with finance people provincially and federally. Although we know that we need to get the provincial liens taken off a property before we can move on it—and this is a specific property where we were just told by Mr Flaherty a week ago, "It's got nothing to do with us; it goes back to municipal affairs and housing"—we have been indicating for two years this is not the case. You are the minister responsible for this. Every other ministry, including your own individuals, have told us that you are the minister responsible for this, but nobody seems to want to address this issue. Unless we get the liens off these properties, we can't actually access some of them.

We've dealt with insurance companies that didn't want to insure us if we assume the liability for this property. They have no concept of how to insure a brownfield site taken over by a municipality. We've dealt with property owners, squatters, just about anybody you can possibly deal with on these properties. We have expended tens of thousands of dollars and hours and hours of taxpayers' money and energy to be able to, at the very least, figure out what is going on with these properties. Unfortunately we've also reached a point where we're very frustrated because we've figured it out for the most part, but now we can't get any of the action going.

I want to show you some of the pictures. I believe you're going to tour Northern Globe, which is one of the properties I have here. You're going to get a sense of it. You'll get an idea of its relationship to the community from these pictures; you'll get a better idea of the

relationship to the community once you've had a chance to see it. It's important to get an idea of these properties. You will see three properties out of 16 in the community, and they are of varying degrees, the first few properties we've been working on.

This is what you'll start to see. I don't know if any other community in Ontario is going to be putting up signs like this in the next little while. This just went up about a month ago, as we started the process to go after this property; 186 Pearl Street is owned by the trustee of the province of Ontario. Bay State Abrasives went bankrupt and, through the process of our lawyers' hunting it down, it was finally determined that it reverted to the public trustee. They had no idea they owned the property and they were not that happy to find out they did. We are in the process of arranging to take this property down. Some of them are a little bit dark in spots, but this is a good idea. This building is coming down. This is the work that has already started to advance. You can see the trailer there of Bay State Abrasives. In the background you'll see a building that's set back a little bit, sort of salmon-coloured. That's a co-op in the area with a large number of children in it directly across the road from this property.

This is the back end of the property. You can see the stop signs there. You can see where that sign was for the city of Brantford. So that's the corner. Directly across the road is a subdivision development. There's the co-op across from the property. If you were standing in front of that sign on the corner and shoot across, that's what you'd see. You will also note the giant H there. That's the Brantford General Hospital; that is our hospital. There are cranes because we're getting a brand new tower built as we speak. But that is the idea of this property and its relationship to the hospital. You'll see that even more closely when you see Northern Globe. It's one block over from the hospital. I'll show you, and you'll get an exact picture.

This is Northern Globe. We identify them by the name of the last corporation to hold it, or the sign that's withering on the side of the building. This property we refer to as Northern Globe, although Northern Globe has told us numerous times that they no longer exist, that they're American and they no longer want to have anything to do with this property. We have letters saying, "We've got nothing to do with it," although they keep interfering with it.

This is the fire that happened, what? Two months ago.

*Interjection.*

**Mr Friel:** I didn't think it was two months ago. This is the fire. This is the back side. This is a business, Robert Lancaster Construction, that garage that's right there. Our fire department was on it immediately.

Those are the remnants of what happened after the area burned. This was arson. It was seen by numerous people and it was suggested that it was likely a group of kids with a case of beer who went in on an afternoon in May when the weather was starting to get better and torched it. They started a little fire in the back. They

probably came off the train tracks that are adjacent to it and went into one of the easy—every brownfield site can be entered. No matter how many times we bolt them back up, they find a way of getting into them. Again, this is what's left of the property after all that.

Nobody owns this property, although everybody thinks they do. There are squatters that have been on this property. We actually had to go through a court case with a squatter who went on that property and said he had ownership of it. We literally had to go to court on two occasions to prove that he actually doesn't even have a position in the building. He'd just been squatting there.

We also had some nasty surprises when we finally got agreement. The medical officer of health allowed us, through his powers, to be able to finally get at this property. We assumed responsibility for it, we demolished it and, when we got into it, we found a number of tanks. Peter, can you tell me the nasty chemicals that we're dealing with?

1450

*Interjection.*

**Mr Friel:** So we found tanks, we found highly flammable solvents and nobody knew what was in them. Sorry, Hansard, about that. I'm just trying to find out what the names of the nasty solvents were.

So this is what we found. We had no idea when our fire department went in there, because we can do tests, but we don't have any authority to go in and do full-scale tests to know what was in the tanks, wherever. When the businesses walk away from these properties, what they leave is what they leave. We have no authority to find out what's in there, and they have no responsibility to tell us what's in there. So we didn't know, and we had our best guess from our fire department that there was not a product. Anecdotal evidence from the people who closed it up was all we could go by. When we got on the property, we were all horrified to find out that there were two tanks of solvents. If those tanks had gone up, more than likely we would have had extreme problems immediately around the site, and possibly our firefighters would have been at great risk.

Those are more tanks. The blue side just to the left of them is our hospital. This is what we've been dealing with. Now you can get an idea. There's the Northern Globe sign and there's the residential property across the street. During the course of that fire I had the opportunity to stop and speak to a lady who had lived there for I think she said 54 years, directly across from it, and she had seen the four fires in the last few years. They had been used to it, even when it was operational they knew it, but she no longer felt safe on a number of issues; not just the fire, but the fact that it was becoming a property for people to sleep in, to hide in, for kids to come in and out of. You never really understood who was in that property, and she was living alone and she was very concerned. So she had to close up her windows and her doors because the smoke was billowing and she had to live with this for a couple of days.

The fourth fire: there's a view from just up the street. You can see the nice hedges. This is actually a very charming neighbourhood. Again, you can see where the houses are. That property is the one you will see. We had \$800,000 that we had set aside two or three years ago; actually, it's probably closer to four years ago. We set aside this money and we were going to use it. We were going to build interceptor trenches; we were going to phase 2 surveys; we were going to fight the court cases. We can't do that any more because every penny of that money has gone to clean up and demolish that property. Now we have to start all over again. So the work we were doing anywhere else in the brownfields, all that money is gone. We've got to build into our budgeting process and our tax base the ability to put money aside on an annual basis, which is what we're going to be debating this year, this time around. But I think we should be in a good position to be able to do it. We've talked about ideas of taxes directly from these properties being brought back into use, going into the pot for a period of time. There's a whole series of possibilities, but we're not even at that point yet because we don't have any money any longer.

This brings us to the point, of course, while I'm on the subject, that it is essential, just as is happening in American jurisdictions, that either provincial or federal governments come forward with money to help municipalities on an emergency basis. This is what an emergency basis is. If you need a criterion or standard, Northern Globe, with four fires in five years in the middle of a residential neighbourhood and next to a hospital, is an emergency situation.

We just expended all of our dollars. We did it in good faith, but we really would have appreciated some help in managing this. We'd also like to point out that on all these properties, particularly the older ones, the taxes came to the municipality but, more directly, they went to the province and the feds. They say the province and the feds have been collecting taxes there since 1920. We're not asking for that sum of money back, but we're asking for regard for these properties just so we can decommission them.

This is one of my favourite properties. This is the Greenwich and Mohawk Streets brownfield area, a very large number of acres. This is where Cockshutt farm, which turned into White farm, and Massey Ferguson had their paint shops. Literally from the 1880s on, almost every tractor or combine that was produced and shipped around the world by White farm and Massey Ferguson was made out of this facility, this property, at one point; either painted, or tools or whatever was coming out of here. This is the state it's in now. Actually, the yellow building on the left has been taken over. At one point somebody had come in and was going to try and turn it into lofts and apartments, and it was done very nicely, and there are some offices in there, as an example of what can be done.

Tires on this property had been a major issue. We had a major tire fire. The province has been chasing a particular tire fire gentleman around. He's responsible for

a couple. He was moving tires in and out and in and out, collecting his money and piling them up in buildings and then locking them up.

This is one of those great stories that make you wonder why you're in government. One of these times after this tire fire we went into a building that had been used at one point and was filled from the ground to the ceiling—long, old industrial building—with tires, just piled high with tires, rubber everywhere. The Ministry of Labour came down because they found asbestos in the building and they slapped a stop-work, do-not-enter order on this building, and it has sat there ever since. It sat there until the roof collapsed. Wasn't that the building where the roof collapsed in the snow? Yes. Once the roof collapsed in the snow, we had the opportunity to go back in again. That cost us about two years of work, dealing with that particular situation.

More of the property; tanks. This is Go Vacations property, which is at 66 Mohawk, taken from a residential—this would have been basically on a sidewalk. It's in front of somebody's house. That's the roof that collapsed on that building. These are the backs of these buildings.

This is from the Greenwich Street side, which runs by the old canal, which runs directly into Mohawk Lake, which runs directly into the Grand River, which is upstream from Six Nations' drinking water supply.

This is another angle. You just get an idea of the acres and acres. This is actually a nice story. This is the Cockshutt building and time office. This was the original building for Cockshutt Plow when the office took over. It was originally Able Plough, and then Cockshutt got it when they sucked up all of the plow companies during a period of expansion. They built this facility. There's a group of Cockshutt plow enthusiasts particularly in Brantford, in Canada, and in the United States who are working now to turn this into an industrial museum that would house Cockshutt as well as other operations.

This property was sold for the brick and wood rights, the salvage rights, to an individual who went through. We didn't want to lose this building which was adjacent to it, so we met with this individual and said, "You can have a demolition permit on the rest of the property. We want you to sever this property and not get a demolition permit on it. We want to talk about it." He agreed to that, and since then he waged a campaign in the newspapers. He threatened to come in and take it down anyway until we told him, "You don't have a demolition permit. You're not going to be allowed to do it." Letters to the editor, name-calling, a whole series of other really nasty situations over something that could have been very positive.

But again, because the owner of this property lives somewhere in Barbados or Bermuda or somewhere and we can only ever talk to him through his lawyer—he hasn't been disagreeable about stuff but he doesn't want anything to do with his property any more—it makes it almost impossible to get anything done.

This building is actually very beautiful. It's still in terrific shape, and we'd like to go after Sheila Copps's

heritage money at some point to be able to have a proper industrial museum. I have a feeling she's going to be throwing around a lot of money in the next little while. I'm just cynical; I can't help thinking that, though, and we want to be first at the trough. Nothing like leadership to—

**The Chair:** Right after Hamilton, you're first in line.

**Mr Friel:** Yes, right.

*Interjection.*

**Mr Friel:** We're all one big happy family, right?

We've been very aggressive about this. I don't think you're going to find another municipality throughout your tour or talk to any other community that has been as aggressive as we have been in dealing with this. We've gone at it from every possible angle. Originally our purpose was that we are going to get these properties back into useful shape in one form or another. With Bay State Abrasives it could be a park. It's beside a rail yard, so the residential is not going to be there. It could be a park. The Brantford General Hospital would like to talk to us about parking for that property. OK, we're going to use it; we'll sell it, whatever we can get out of it. We know we're not going to make any money on it. We're not going to turn a profit on these. We don't expect to. What we want to be able to do is put back into long-term use acres of land within our community.

As municipalities we have no choice but to plan across generations. The generations before us benefited from these properties. We are the generation that has to deal with that benefit, that has the fallout from it. Our decisions and the choices we make have to be made for the generations who are going to live with it next, and we have the ability to do that.

We've taken the legislation very seriously. We've come through a number of things and we would like to recommend, from our experience, what we've been able to find, actually getting to the point where we're demolishing these buildings, assuming responsibility for them, hunting them down, fighting with everybody, connecting with everybody. These are the items we would like to recommend for Bill 56.

1500

Do you know what? Are you making a presentation today, Matt? Come here, Matt. The reason I am asking Matt to come forward is because he is a lead on these. I have always believed in my heart that people who understand the issue should be the ones who appear. If there's an engineering issue, I would get an engineer to explain it to you. Maybe Matt can just highlight some of the recommendation points of what we were looking for as we were going through it.

This is Matt Reniers, who is our chief heritage—

**Mr Matt Reniers:** Policy and heritage planner for the city of Brantford.

**The Chair:** You'll have to speak very quickly too. You have about two to three minutes left.

**Mr Friel:** We'll go fast.

**Mr Reniers:** The first point with Bill 56 is that right now, as it's worded, records of site condition will be

required for every change from industrial/commercial use to a residential or park use. The point we're making is that it should be required where there is a potential environmental concern, but not in all changes of use do we have that environmental concern. An example is where we converted a commercial building downtown to a university residence, and there wasn't an environmental concern. The way it's worded, it should be a little bit more flexible and allow for situations where records of site condition aren't appropriate.

The legislation allows receivers and trustees in bankruptcy and fiduciaries to abandon their interest in the site when there is an environmental order, if they wish to or don't have the assets to do that. Where a municipality acquires a property under a tax sale, it's not given that right to walk away from a site or there is no cap on the amount of resources they can put into it. Our thinking is that we should be treated in a similar fashion to trustees and fiduciaries.

The other thing is that the legislation is not clear on who picks up the environmental order when people have walked away from it. If a trustee says, "No, we're not going to deal with it," or a fiduciary says, "We don't have the assets to deal with the order," who is responsible? The act is not clear at all as to who is responsible. Our point is that whoever issues the order should be responsible for ensuring that it's carried out. These are orders when there are environmental concerns that the Ministry of the Environment feels very concerned about that have to be dealt with.

The other thing is, we appreciate the ability, after a tax sale, if it's successful, to get on site and do environmental assessments. That's an improvement, but we think the act should go further and allow us to go on site even before the property is put on for tax sale. As long as it's eligible for the tax sale, we should be able to get on.

One of the problems is that business will not buy a property if they don't know what the problems are. Uncertainty creates inaction. If we can have the phase 2 assessments done when we put it up for power of sale or tax sale, then we can provide that to prospective purchasers, and hopefully it can be made more attractive and perhaps someone in private industry might be more willing to pick up the site because they'll have more knowledge about it. So we want to get on earlier.

Liability protection to two years: most of the projects we're going to be working on are going to take a lot longer. The Bay State Abrasives we'll do in two years, but I think everything else, we can't. We'd like to be able to negotiate with the Ministry of the Environment with a remediation plan and have the assurance upfront that we'll have the liability protection right through to the end of the process. It will allow us to probably take remediation strategies that might take a little longer but are less costly to implement. Two years is not enough time. We need more. We would preferably like to negotiate that on a site-by-site basis with the ministry.

Cancelling and reducing of taxes: our understanding of the act is that the municipalities will be able to cancel

and reduce taxes during the rehabilitation period and the development period, whereas the province with their school taxes would only do that through the rehabilitation period, which is only an 18-month period. The development period is a lot longer and it's capped by the total remediation cost.

We feel, on these tax breaks that go to private industries, that the province should be a full partner with us and match our tax relief programs that we have in place or that we can put in place under the legislation. We want fuller participation by the province.

The community improvement plan: in the bill you're taking out the phrase "or for any other reason." Community improvement project areas are used for a wide variety of purposes, and we want to maintain the flexibility that is currently in the Planning Act for that. So if you can keep that phrase in, we would be happy.

The legislation doesn't deal with provincial liens. The mayor has talked about them briefly. They are a concern. We understand that the province is looking at some protocol to deal with how to remove liens or what kinds of circumstances it would take to do that. We strongly believe that liens have to be dealt with and we urge the province to move forward with that.

**Mr Friel:** I know we went over our time. I appreciate the extra time just so we had the opportunity to present the recommendations. That would be the presentation on my behalf.

**The Chair:** Thank you very much, gentlemen. We appreciate your recommendations and your presentation here today.

**Mr Friel:** We have copies of the presentation for you.

**The Chair:** Thank you.

#### BRANT COUNTY HEALTH UNIT

**The Chair:** Our next presentation will be from Dr Doug Sider, medical officer of health for Brant county.

**Mr Robert Hart:** Hello, Mr Chair. Dr Sider couldn't make it today. My name is Bob Hart. I'm the director of environmental health with the Brant County Health Unit. I have a prepared statement which I'll read.

I think Mayor Friel did an excellent overview of what's going on in a number of the brownfield sites here, and Northern Globe in particular. As he alluded to, we were in an unusual situation, perhaps unique, where the Brant County Health Unit issued an order under sections 13 and 14 of the Health Protection and Promotion Act to remediate that particular site. That work is ongoing, and you will be out there this afternoon to take a look at it. It's that particular issue and the recommendations the city put forward around that, and that whole issue of environmental orders, and perhaps the Health Protection and Promotion Act orders as well: what do you do when you have a site where there is clearly no one who is able to pay the bill or who has responsibility for the site? How do you bring about remediation of those sites?

I'll just read through my prepared statement, and then if you have any questions, feel free.

As the committee has learned, the brownfield site located at 22 Sydenham Street, in other words, Northern Globe, is the subject of an order under sections 13 and 14 of the Health Protection and Promotion Act. This order requires action to both secure this property and remove all structures on the site. Again, you will see that this afternoon when you're touring.

As you will appreciate, the medical officer of health for the Brant County Health Unit had very serious concerns about the risk posed to the community by this property and he saw fit to issue a Health Protection and Promotion Act order. This concern is best illustrated by portions of the description of the property that were included in the order. You've had a lot of details, but I think it bears going through this again so you can hear the particular issues that caused the concern that brought about the issuance of the order.

The premises comprise an abandoned industrial site located within a dense residential area that includes a school, community centres and a church. A major railway artery runs adjacent to the northeast perimeter of the site, and the property is in close proximity to the Brant Community Healthcare System; in other words, the Brantford General Hospital.

The premises are unsecured and consist in part of derelict structures that have been deemed unsound by the city of Brantford building officials. Again, you've seen the slides. These conditions serve as an attractant to local youth and other unauthorized persons. These individuals are at risk from physical hazards on site and from exposure to hazardous chemicals and materials that may also exist.

Additional intact structures exist on the site. The previous industrial activities carried out on the site suggest that these structures could contain hazardous materials. As you've seen from the mayor's presentation, they did in fact find a number of solvents and other materials there that were quite hazardous.

#### 1510

Four fires caused by arson have occurred on the site in the past five years. The most recent—again on the slides—occurring on May 15 of this year resulted in the evacuation of local residents, hospitalization of some residents and property loss. The high probability that additional fires could be set on this site raises the following additional concerns: noxious fumes and smoke could have potentially serious adverse health consequences for neighbourhood residents. As well, it may be necessary to evacuate the hospital, something that causes us grave concern. This could lead to disruptive and potentially devastating consequences as emergency health services are suspended and critically ill patients would have to be moved.

The involvement of rail traffic in a fire—again, we have a rail line in close proximity to this site—particularly with regard to hazardous chemical freight could have severe, if not disastrous, effects on the community as well.

I'm afraid I'm boring you because you've heard about the Northern Globe site, but the point in providing the

committee with this degree of detail is to underscore the fact that there is nothing particularly unusual or unique about this particular site. Many or all of the variables noted above, as well as other potentially hazardous conditions and characteristics and materials etc, may well exist on other sites just the same throughout the province.

It follows, then, that there probably exist numerous—although they can't be quantified—potential health hazards related to brownfields throughout Ontario. It is important to notice too that the word "potential" is not synonymous with the word "theoretical." We know in this particular case that the conditions described posed a very real risk that brought about very real adverse health effects in that particular community. There is no reason to assume that this couldn't occur in other areas throughout the province.

The use of a Health Protection and Promotion Act order to remediate risks associated with brownfields is, to our knowledge, uncommon and perhaps unique to Brantford. However, as health units become increasingly involved with issues pertaining to environmental health risk, such orders could become an immediate, powerful and common instrument of corrective action.

But an order is only as effective as the potential for it to be obeyed. If it's not obeyed, then the condition continues to exist. In situations where an order can be served upon a responsible entity, there will likely be a high degree of compliance, and even in situations where the entity fails to comply, there is recourse for the public health unit to undertake the work themselves and recoup the costs, either through the courts or through the tax rolls.

However, as we've heard and I'm sure you've heard through your tour, in the case of most brownfield situations there is no responsible entity. If a health hazard is to be mitigated, the cost must be borne by the local public health unit or, as evidenced by the Northern Globe situation, by the local municipality. It is significant to note in this particular case that the only reason the remediation at Northern Globe is occurring is that the city of Brantford council had the willingness to act on this even though they didn't have resources specifically set aside. We heard from Mayor Friel what the cost of mitigating the problems at Northern Globe has done to the continuity and the ongoing plans they had for brownfields in general in the area. It's quite a negative impact in that way. Again, this willingness will not always exist or the resources are simply not going to be available among other municipalities, or in this municipality, should anything happen again.

The health unit believes that health risks associated with brownfields cannot be effectively managed by placing the burden of remediation upon the shoulders of local municipalities. Adequate resources are simply not in place, and the very real danger exists that a hazard could go unmitigated. A provincial role in completing the work required in an order would remove this danger.

Those are my comments. I have copies of this which I will provide to you.

**The Chair:** Thank you very much. The clerk will hand those out. You have left us time for questions, if you're willing to take them.

**Mr Hart:** Certainly.

**The Chair:** We'll start the rotation this time with the government members. We've got about two and a half minutes per caucus.

**Mr Miller:** Thanks for your presentation today. The property you are outlining sounds like a fairly severe case in the total picture of all the brownfields out there. I'm wondering if there should be a categorization of more hazardous sites and less hazardous sites across the province. Obviously this sounds like a more hazardous site and one that is more contaminated.

**Mr Hart:** I think being able to do that would be a great thing. Part of the problem with doing that is the ability to gain access to the sites, to be able to find out ahead of time what's actually there. I think Mayor Friel spoke to that issue, that sometimes there's just not the legal authority to get into these places and determine what's actually there.

This was a good situation where, after we had the fire, it was very plain that there were situations—the site was unsecured; kids could get in there, people with their cases of beer, and start a fire; the potential for evacuation of the hospital; the issues with the rail line etc; and a suspicion that maybe things had gone on there, but only a suspicion. It wasn't until we invoked the Health Protection and Promotion Act and were able to get on the property that we were able to get in there with a demolition crew and find out that, yes, there were other things.

I think having the strength or the teeth to be able to access these places and, where you have sites that you haven't had access to, to be able to get in and do some sort of triage, would be a really useful thing. I think you're right that not all sites will pose the same level of risk.

**Mr Frank Mazzilli (London-Fanshawe):** Thank you very much, and thank you too, Mayor Friel, for your presentation. What you've outlined is exactly why Minister Hodgson came out with this legislation. These sites exist across Ontario and have existed for many years, with many governments choosing to do nothing about that. Minister Hodgson did say that this legislation has come out in order to start doing something about brownfields.

Some of the recommendations you've put in your presentation I believe are valid. The point about going in and inspecting a site when you have the authority for ownership under the tax liability, whether that be done with some sort of warrant, where you have to obtain an order before you go on site, that would be reasonable too. It's built into other legislation and I don't see why it can't be built into this legislation, to give municipalities that authority to inspect sites prior to taking ownership.

I just want to thank you for your thoughtful process, not just complaining about the problems but how to better the legislation. Again, thank you.

**Mr Dave Levac (Brant):** To start, I'd like to welcome my colleagues and the staff to Brantford and the riding I

represent. I hope as many of you as possible can get a chance to see the site that you've actually seen pictures of, to get another first-hand view of exactly what problems the municipality faced during this particular crisis and the fact that this city was very proactive in trying to establish a rule of thumb or a best practice of how to recapture these brownfield sites. I've talked to my colleague, and he assures me that Hamilton needs some help to try to correct some problems it has.

That being said, I'd like to ask you if indeed you support the mayor's contention that there should be consideration given to an emergency fund by the province to draw on in the case of something as extreme as the Northern Globe fire.

**Mr Hart:** We do definitely, yes. In the written summation that we haven't provided yet, that is spoken to specifically. I think we really need that, as I said before, for the continuity of brownfield plans in areas where brownfield plans exist. When funds have to be diverted to take on emergency work like this, it really hampers the overall brownfield plan. Again, in other municipal areas there may not be resources at all to actually undertake this work and you may be in a situation where you have a significant health risk that's going to be left unmitigated.

**Mr Levac:** In part of your recommendation, then, I would include what we've heard from the presentations I've been present at, that there was encouragement and acceptance and support for the legislation and the fact that the brownfields legislation was being introduced and looked at. I would suspect very clearly that over the years municipalities have been coming to the province, time and time again, to talk about recapturing these pieces of property so that they can be value-added.

One of the pieces of the legislation that's been recommended by both opposition parties has been the right-to-know legislation that provides municipalities and, in particular, fire departments with information directly in their hands as to what's in those factories or on those sites. Could that be part of this legislation? I think Mr Mazzilli likened it to the first step, getting in ahead to be able to decide whether or not there are materials on site, for the protection of citizens. I think that's what you were referring to?

1520

**Mr Mazzilli:** The tax portion—

**Mr Levac:** Ahead of time.

**Mr Mazzilli:** Before taking them over.

**Mr Levac:** Right. And by taking them over, that provides you with an opportunity to identify, in terms of the health and safety that you're responsible for—would it be inclusive of that? Would it be a wise thing to do as well?

**Mr Hart:** I think anything that would assist us in having more information about what's going on or what has gone on in the past on these sites and the kinds of materials that potentially may be stored there certainly would be a good thing. What legislation it would actually link to I couldn't say, and what would be the most

appropriate way of doing it I'm not sure, but having the ability to get hold of that information would certainly be a useful thing to do.

**Mr Levac:** Thank you, Mr Chairman. I appreciate the time.

**Mr David Christopherson (Hamilton West):** Thank you for your presentation. I also take this opportunity to thank the mayor for an excellent presentation. Probably you could take an awful lot of what you said and apply it to just about all the older communities across the province in terms of the nature of the problems and characterizing the challenges we face in trying to deal with them.

I found in the immediate presentation a real interest in the fact that you used the Health Protection and Promotion Act. In the city of Hamilton—and Dave Levac is correct: Marie and I are part of a community that has a huge problem here. I wanted to give one example that points to the creativity you've used and that others have had to use.

A few years ago we had a case of an abandoned building, similar to any of the pictures that you showed here, where a bunch of kids broke in and it was determined that they had accessed liquid mercury. Because it was one of these abandoned buildings, you couldn't readily identify who owned it. Nobody knew what to do, except that we had a minor emergency. The mayor of the day, Mayor Morrow, declared a state of emergency, and there were quite a number of people in the community who thought he had actually overreacted—sort of à la calling in the army for a snowstorm. But those of us who understood the legislative framework the mayor had to work under realized that the only way he could coordinate and access all the services that he needed immediately to track down the kids, to find out where they were, to determine how much mercury there was, to make sure that was all found and taken out of the community, as well as secure the site, as well as accessing immediately without question provincial and federal assistance to do this, the only way he could ensure that would happen in the timeliness that he felt the situation demanded was to declare a state of emergency.

I wanted to follow up on your use of the act and ask two questions. One, did you have any follow-up from the province in terms of concerns on their part that you had misinterpreted, shall we say, or exceeded what the expectation of the act was for? Second, did that allow you to access any other dollars vis-à-vis what Mayor Morrow was looking at when he made the declaration? Did using the act provide you with access to dollars that you otherwise wouldn't have had at your disposal?

**Mr Hart:** The answer to both questions is actually no. In the first case we let the ministry know through the public health branch what we had done with regard to using this order. They were quite interested in it and have asked us to write it up for internal circulation among the health units as a publication as a novel but appropriate way of using the Health Protection and Promotion Act when a health hazard is identified. So not an issue there.

But, no, unfortunately, using the Health Protection and Promotion Act and issuing an order doesn't free up money from any particular pot in order to deal with that situation.

**Mr Christopherson:** Does it give you any further assistance in enforcing the order from either of the other two levels of government or does it still keep you within your own—

**Mr Hart:** With our own. It's a very powerful act. It allows us to do quite a bit if a health hazard is actually identified. But again, it always boils down to dollars and cents, where the money will come from to do it if you can't find a responsible party to carry out the work.

**Mr Christopherson:** Thank you for your presentation. It was fascinating.

**The Chair:** Thank you very much for coming before us here today.

#### COLIN ISAACS

**The Chair:** Our next presentation will be from Mr Colin Isaacs. Good afternoon, Mr Isaacs. Welcome to the committee. Just a reminder: we have 10 minutes for your presentation.

**Mr Colin Isaacs:** Thank you very much indeed, Mr Chairman, members of the committee. It's a pleasure for me to be with you this afternoon. I have provided the clerk with an expanded copy of my remarks. I'm going to abbreviate them in order to fit within the time we have available.

I am an environmental policy and program consultant who works primarily with the private sector to design and implement initiatives which benefit both the environment and the economy. My clients include companies in the agri-food, consumer products and energy industries, as well as others. I have been working as an environmental consultant since 1989—my experience in the environmental field goes back to 1980—and I'm a chartered chemist, recognized by the Association of the Chemical Profession of Ontario. I have been involved in Ontario recycling issues since I sat on the advisory group on recycling that was appointed by Environment Minister Susan Fish back in 1985, during the Frank Miller government.

I'm appearing today to share my own views on Bill 90. I'm not representing any company or interest group but I'll explain later why I think it's important that Bill 90 be got right.

Bill 90 is environmentally perverse legislation; that is, it's likely to do the exact opposite of what would be best from an environmental perspective and, in this case, the exact opposite of what its title says it seeks to achieve.

Every study of economic incentives to achieve environmental objectives makes it clear that the most effective approach is to provide economic benefit to companies or individuals who take measures to reduce their impact on the environment and/or to penalize those who cause increased harm to the environment.

Bill 90, as proposed, does the reverse. Under Bill 90, as proposed, those companies which use recyclable packaging or which market recyclable products will be forced to pay a levy to help pay for the cost of recycling. Those companies that use non-recyclable packaging or which market goods which are not recyclable will not have to pay a levy. This is a clear example of an environmentally perverse incentive. Companies, always looking to reduce costs, will make every effort to move their packaging from recyclable to non-recyclable materials; for example, from recyclable PET to non-recyclable PVC, or they'll seek to stay in non-recyclable package types. Opportunities to increase recycling of both packaging and products will be resisted because getting involved in recycling, something which is obviously environmentally preferred over disposal, will increase distribution costs in Ontario.

I want to stress that I am in no way blaming the Minister of the Environment or the ministry staff for this bill. The bill seeks to implement a proposal put forward by the interim Waste Diversion Organization, a group made up primarily of industry associations and municipal representatives. The biggest challenge we face is that recycling is the new activity on the block for Ontario municipalities. For more than a decade, municipalities have been worrying about how to pay for newly introduced recycling programs even though every respected study on the subject shows that recycling is cheaper for municipalities than waste disposal. So municipalities want money to help pay for recycling, and the interim WDO has tried to devise something to address that municipal demand.

Can the situation I've described be fixed? It's difficult. I prefer a major rethink of the bill applying the principles recently laid out so clearly by Val Gibbons in her report, *Managing the Environment: A Review of Best Practices*, prepared for the Ontario cabinet.

Put simply, companies that use environmentally preferred solutions—recyclable packaging and recyclable products—should pay less than those whose products or packaging must go to landfill or disposal. However, there is one simple change that may be worth considering, and that is to permit an IFO to collect fees based on the cost of collection and disposal of a waste where products or packages are not recyclable. This would not be a perfect solution, but it would at least allow an IFO to collect monies from companies which are not taking their environmental responsibility seriously. I have provided a rough draft of a proposed amendment on the last page of the full paper which I'm providing to the committee.

Finally, why am I here today? First, I want to help make sure that my home province has world-class environmental legislation. Bill 90 is not world-class. Second, as a member of a company within the Ontario environment industry, and in particular a company that exports environmental management services to countries throughout the Americas, it will be embarrassing if Ontario adopts legislation which is so obviously environmentally perverse. The environment industry in Ontario

currently numbers roughly 2,000 companies, employing almost 65,000 people. Environmental exports from Ontario to other countries total over \$750 million. Clearly, anything which diminishes our strong reputation as a supplier of environmental technologies and services to the world is of concern to me.

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My company and others are currently working with governments in Brazil and Argentina to design and implement household recycling programs based on the Ontario model, the blue box model. I do not want to have to explain to government officials overseas why my own province has introduced legislation which is environmentally perverse and exactly the wrong way to encourage reduction, reuse and recycling of waste. We already have a tough time winning environmental contracts in the face of strong European competition. We need good legislation at home to prove to foreign buyers that Canada and Ontario are truly environmental leaders.

I've focused on only the most major of the concerns I have with respect to Bill 90. Many of my other concerns have been addressed by other presentations before this committee. I thank the members of the committee for their interest and I'd be pleased to answer questions.

**The Chair:** Thank you very much. That affords us only about two minutes. I'm going to give the time to the next party in rotation. That would be the official opposition.

**Mr Levac:** Having heard your presentation and your using such language as "environmentally perverse"—why do you think this kind of legislation was put forward?

**Mr Isaacs:** First I should explain that "environmentally perverse" is a technical term from the economic community. It is not as bad as it might sound. It does mean something in the context of the OECD and the UN etc.

Second, I think the biggest problem, as I've indicated, comes from the pressure from municipalities for money to pay for recycling programs. There is a problem with the way municipal accounting works under the Municipal Act in that municipalities basically deal with all of their costs on an annual basis and are not required to account for the costs of capital investments such as new landfills, which are incredibly expensive. If you look purely at year-to-year operating costs, recycling can look more expensive than landfill, and municipalities are therefore saying they want money to pay for their recycling programs. I think that's understandable. They are the new kid on the block. On the other hand, if you take into account the costs of a new landfill, which are enormous in Ontario today, then clearly every time you divert a tonne of waste from landfill to recycling, you're extending the life of your landfill and saving a tremendous amount on capital costs down the road.

I think the ideal would be to go back to municipalities and talk to them about the fact that they really ought to be asking for money to pay for their waste disposal programs and that the products and packages that go to

the dump are the ones that should be charged a levy, and let's start the process all over again and get it right. On the other hand, I recognize that municipalities are eager for revenue. I'm not sure that anyone wants to hold up this legislation. So if we at least give the WDO the power to charge a levy to those companies that are marketing a product or package which is competing with a recyclable product or package, then the WDO will have the power to redress the concern I have by the way it charges levies, and it will be charging not just the people who produce recyclables but the people who produce non-recyclables. I'd encourage that approach.

**Mr Levac:** Very good, Mr Chair. I assume that's enough.

**The Chair:** Thank you very much, Mr Isaacs. I would just point that out right now there is a consultation paper out on the new Municipal Act. You may wish to offer some comments relating to the way that municipalities currently do their bookkeeping.

**Mr Isaacs:** It's not really my area of expertise, Mr Chair, but I was a municipal councillor once upon a time, so my knowledge is general, not professional. But thank you for the suggestion.

#### MAXINE MOORE

**The Chair:** Our next presentation will be from Ms Maxine Moore. Good afternoon. Welcome to the committee.

**Ms Maxine Moore:** Thank you. You'll have to just bear with me; I'm not a public speaker. I haven't had a speech since grade 7, but I'm here today for my own moral issues and the moral concerns of every single person in this community.

I am an employee at a large corporation in the city of Brantford. I have been a valued employee for nearly 12 years. To date my work record "shines," quoting one of my supervisors, and I'm "one of their best," to quote the other. I have been asked to train new employees up until last year, when I declined to do so for personal reasons. I have been chosen for special projects when that extra sparkle was needed for the media. Approximately two years ago I was the first in my department to earn an Excellence in Service Award.

I have never filed a grievance with my union or in any way been labeled a troublemaker until May 22, 2001, when I brought forth a health and safety concern to my employer. Now I am a thorn in their side. I have been emotionally abused almost daily by several management personnel. The pain in my heart that you cannot see has changed my life completely. My marriage and children have suffered deeply, and not always along beside me. Many days I have walked alone with no support whatsoever except my silent supporters, intimidated by their desperate need for a paycheque. This not only includes several of my co-workers, but also the unsuspecting contractors on and off site who have been deceived, along with government officials, doctors and many management personnel following their line of duty.

My human rights have been violated beyond repair. I'm not sure I'll ever be able to trust in the so-called system of procedures again. Since May 22, 2001, I have been lied to and intentionally deceived by many management personnel whom I trusted without hesitation for several years. These last three and a half months have been for me a nightmare. I'm not so sure I'll ever recover. The destruction that has been going on would be unthinkable to humankind.

I am here today to tell you why I think Bill 56 and Bill 90 are being considered for change.

That's all I've written. So, any questions?

**The Chair:** You've certainly afforded us just over two minutes per caucus. This time we would start with Mr Christopherson.

**Mr Christopherson:** I don't know what to ask.

**Ms Moore:** I work at the Brantford General Hospital. I'm a housekeeper and I believe I have been exposed to asbestos, and intentionally lied to and deceived as their reaction. I can prove that. I have all the documentation. I have over 100 pages of documentation where management has actually contradicted themselves in a single report.

They had a joint health and safety committee about me that I was not allowed to attend, and the manager of maintenance, Anne Overhoff, the occupational health and safety nurse, picked the union representation who were there to represent me in this meeting and they weren't allowed to speak to me before the meeting. They said they had enough information from management. That's a violation of the union contract, never mind my human rights.

In this meeting they were all given a chronology of events, which was untrue. Then they had everyone sit around the table and discuss me. All the facts stated in that joint health and safety meeting were not true to the real picture of what went on. However, it allowed them to have a document they needed to show officials that I'm crazy, that I don't know what I'm talking about.

They had changed several statements in that report when they sent in a response to the Ministry of Labour's appeal that I proceeded with until yesterday. I have dropped appeals with the Ministry of Labour because I'm aware now that they have been lied to as well by hospital management and, yes, I can prove that too. I have all the documents anyone needs to see to prove this but no one wants to get involved—no one. Everyone, including the Brant County Health Unit, tells me, "What steps are you taking?" and I tell them and they say, "You're doing a good job, you're doing a good job. Keep going. Don't ever lose your confidence. You're doing the right thing. Give us a call and let us know how you're making out." I'm tired of it.

My son was threatened two days ago—threatened—on his way home from school because the construction companies in this area believe something that's not true. They believe that I started this whole thing because construction people told me misinformation. You know what? That is a flat-out lie. There are a lot of people

waiting silently to back me up when the time is right, and let's do it today because I have had enough. You want to mess with me, that's one thing, but not my son. Not my son.

**The Chair:** Any additional questions? We went a little long on the first one. Perhaps, in fairness, Mr Levac.

**Mr Levac:** Maxine, as you are aware, this was brought to my attention and we're still dealing with it. There's a letter going out to express the concerns that you've voiced to me to the appropriate places, and I've been assured that there will be a response to the letter I sent, that you're aware of.

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**Ms Moore:** Are you aware that the construction companies that are in the building right now were not informed of any asbestos location until after I asked my question on May 22? Could I have been exposed to asbestos from cleaning all the ceiling tiles in several different areas of the building over the last two and a half months? Are you aware that I was informed by an expert in asbestos who states that the hospital is not willing to put out the kind of money it would cost for them to have an asbestos location survey, which by law they have to have? Are you aware that none of the contractors were notified?

I was told by someone in the sprinkler crew that they were wrenching up in the ceilings for as long as they needed to do their jobs, and a week later the asbestos hoarding went up and they removed asbestos. This young worker was not told about any asbestos locations and didn't even know what it looked like. Do you call that something we can be proud of in this community?

The structural walls are full of asbestos, the plaster ceilings, the plaster walls; the old fireproofing spray that the hospital states, in a document that I have, was all removed in 1983 and 1984 from the buildings. That is a lie, because I have another document, which in fact was the first document they gave me to shut me up, that states otherwise. They removed old fireproofing spray this year in May, before I asked my question, on another area, not just on the first floor. They state that it's only on the first floor and it was all removed in 1983 and 1984. That is a lie; I have a document that proves it. The only reason they admitted to SP1 having any is because the day I asked my questions the ceiling tiles were down and wide open, and anybody with any knowledge whatsoever of asbestos would have known it was there.

**Mr Levac:** Mr Chairman, it will continue and I have pledged to Maxine that we will continue to look into her situation.

**The Chair:** Thank you for coming—not exactly on topic, but as MPPs we're certainly eager to hear concerns at any time.

**Ms Moore:** I do think it has something to do with the bill, in my opinion, because these walls that these construction workers didn't have any idea were full of asbestos, where do you think they went? Anybody have an idea?

**The Chair:** Presumably to a landfill.

**Ms Moore:** Bingo. It's not the construction contractor's responsibility to go into a building and say, "Where's your asbestos?" It is the responsibility of the building they enter to notify them where the asbestos is, by law. It is not any contractor's responsibility whatsoever. Do you see the mess we're in here? The ventilation system alone in that building is a disaster.

**The Chair:** Ms Moore, I appreciate your putting your concerns on the record here. I'm comforted that your local MPP has also been apprised of the matter, and we have to take it on faith that people you've written to will in fact meet their responsibilities.

Thank you again for coming before us here today.

Our next presentation will be from Mr Paul Urbanowicz.

**Mr Friel:** Paul's one of our councillors and he's not here, so I'd be happy to come and talk for another 15 minutes.

**The Chair:** I'm sure you would, but let's move along to the city of Waterloo then. If Mr Urbanowicz shows up, we will accommodate him.

## CITY OF WATERLOO

**The Chair:** Welcome to the committee. Just to remind you, we have 20 minutes for your presentation.

**Mr Brent Needham:** Ladies and gentlemen of the committee, thank you for granting us the opportunity to speak to Bill 56, the Brownfields Statute Law Amendment Act. The city of Waterloo has a history of involvement in brownfield redevelopment. I'd like to take this opportunity to highlight a few of our success stories, touch on areas of the legislation we feel should be expanded and offer a solution to what our experience has shown to be the main deterrent to the revitalization of brownfield lands.

We won't go into any great depth on the specific sections of the act that the AMO submission has already detailed. The city of Waterloo generally agrees with the comments and would instead like to offer suggestions from our experiences.

As you can see from this picture to the right, the core of the town of Waterloo was highly industrialized in 1891. A set of tracks divided the area and a CN rail yard was housed just to the edge of the core. The early 1990s witnessed the closing of four area industries, representing a combined 61 acres within the central area of the city: Seagram's distillery, representing 11.2 acres, Labatt Brewery with 6.1 acres, Canbar with 14.8 acres and the SunarHauserman Furniture site of 29 acres. The obvious result was large tracts of underutilized land in our core, a loss of jobs and a concern for the viability of our community.

The city took a proactive approach instituting a vision to encourage new employment opportunities and replace jobs, foster mixed-use development, encourage residential development as a support base for the uptown, promote compact design, provide public and private recreation opportunities and foster creativity, just to

name a few things. This aerial shot of the same area taken in 1999 gives you an idea of how the landscape changed. By this time, redevelopment had occurred on most of the lands; however, it is still ongoing and the city continues to work for the revitalization of our uptown.

As an example, here are a few sites where the city worked with developers. The Luther Village site, now a seniors village, was previously the home to Sunar manufacturing. When TransAmerica Life became the owner of the property after a defaulted mortgage, they found themselves in trouble with an environmental mess. Underground storage tanks for solvents were removed, along with 800 tonnes of leachate toxic soil and 1,000 tonnes of non-hazardous waste along a previous rail spur line. Test wells encountered sporadic low-level findings of TCE. A pumping and treatment program began and is ongoing.

The city worked together with TransAmerica and the Luther Village people to get this site cleaned and the use changed. However, without the significant dollars at TransAmerica's hands, this project may have never gotten off the ground. The city was also involved with land conveyances, granted a development charge credit and a smaller parkland dedication. The region of Waterloo contributed to the cost of traffic lights.

Waterloo city centre is now home to the city's council chambers and municipal offices along with three other private office spaces, an investment office, a chiropractic office, a hair salon, our business improvement area office and a restaurant. CN Real Estate was the original building owner, with the city leasing 40% of the space. Land was assembled between the city and the existing CN rail yard to form the necessary parcel. Test holes were dug; however, they missed wells storing coal tar that was later uncovered during the excavation of the foundation. The \$2.5 million-cleanup of this project was cost-shared by CN Real Estate, the city and the province.

The city purchased the Seagram lands and have sold parcels to make up the Barrel Warehouse Lofts, Euclid Avenue townhouses, and leases this building to Waterloo Maple, a local computer software manufacturer, a local high-tech success story. It was important for the city to become involved in order to speed up the redevelopment of these lands. However, we did assume liability for certain environmental unknowns.

The city of Waterloo generally supports the comments made by AMO on behalf of the municipalities of Ontario. Bill 56 is a positive step by the province in their Smart Growth strategy. It recognizes the importance of cleaning up brownfield sites and encourages infill development. However, the following issues should be addressed.

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Prohibition on certain changes of use: the definition of what requires a record of site condition to be filed under the environmental site registry needs to be expanded and should also provide direction where a property could comply with zoning bylaws under the Planning Act. That may require a record of site condition to be filed with the environmental site registry under Bill 56. For example, site A is zoned to allow mixed uses, the current use being

commercial and the proposed use being a residential apartment building. The zoning bylaw currently allows for this development. However, Bill 56 considers this a change of use requiring a record of site condition to be filed under the environmental site registry. Those issuing a building permit might not realize this, since the property conforms to the zoning bylaw. It must be determined which act takes precedence. Checks and balances will need to be put in place.

In addition to that, the repeal of an amendment bylaw governing tax assistance: a provision is needed to allow for the bylaw to be repealed or amended where the conditions of the bylaw have not been met. For example, a bylaw is passed, but the developer is slow to act or shows no sign of attempting to clean up on-site. A mechanism should be in place that would allow council to repeal the bylaw. A provision is also needed to allow council to extend the time for tax assistance without going through a full public process when complications beyond the control of either party have arisen.

The city agrees with the AMO position regarding the definition of a community improvement area and that the "for any other reason" should remain. However, the city finds value in keeping environmental, social or community economic development as a component of community redevelopment. We suggest the definition read, "'Community project area' means a municipality or an area within a municipality, the community improvement of which, in the opinion of the council, is desirable because of age, dilapidation, overcrowding, faulty arrangement, unsuitability of buildings, environmental, social or community economic factors, or for any other reason."

With all this in mind, the city examined the main deterrents to brownfield site redevelopment and found the following two main deterrents were not adequately addressed: liability and cost of cleanup.

First, liability: the proposed legislation addresses this concern with respect to environmental orders; however, it needs to be further expanded to include protection from environmental prosecution or civil suits. Municipalities should also be afforded the same protection as receivers or trustees. The city of Waterloo agrees with those comments made by AMO and encourages the province to make the necessary changes.

Second, cost of cleanup: this is a major deterrent to developing brownfield sites. Property taxes owing can be more than the value of the property. Federal and provincial liens, coupled with the actual cost of the cleanup, make brownfield sites unattractive to potential developers. The city of Waterloo has come up with creative solutions in the past. For example, a recent brownfield site was acquired by the city through a tax sale with over \$1 million in back taxes owed to the city. We were able to reach an agreement with the developer whereby the city forgave a portion of the taxes owing. We worked closely with the developer and the Ministry of the Environment to see the site redeveloped. We recognize the city has benefited from past businesses on this site and will benefit from having this site revitalized. How-

ever, there also has to be recognition from other levels of government that these sites are an investment in our future. Collectively we can all gain through their redevelopment.

The city of Waterloo recommends the province establish a super rebuild fund, available to municipalities and private businesses that are willing to partner with all levels of government—federal, provincial and municipal governments—for the quick cleanup and redevelopment of brownfield lands. This fund would recognize the redevelopment of these lands as an investment that would quickly be paid back through increased property assessment, the creation of jobs, income tax and corporate tax dollars.

This fund also recognizes the social benefits of cleaning up brownfield sites. Health and safety concerns are removed, along with improving the aesthetics of the community. With this fund, the net is cast beyond the financial responsibilities of the municipality, to all levels of government. The city has often written off back taxes to encourage redevelopment, and we'd like to see all levels of government which benefited from the previous use of the property, and will benefit from future uses, become financially involved.

In summary, we'd like to thank the committee for the opportunity to speak to the bill this afternoon and to respond to any questions before the September 21 deadline. For myself, thanks to Julie Finley, Rob Trotter and the committees at the city of Waterloo who helped to put together the presentation.

**The Chair:** That gives us just under three minutes per caucus, and this time we'll start with the government.

**Mr Mazzilli:** Thank you, sir, very much for your presentation. Your first point is well taken. Essentially what you're saying is, be careful that this legislation doesn't contradict other pieces of legislation or in fact have unintended consequences with other pieces of legislation.

On the second point of the rebuild, did you see the proposal from AMO on a rebuild fund? Would it be one third partners by the three levels of government? Is that the type of funding you see?

**Mr Needham:** I think there has been some discussion about that. My sense is that's the direction we've been going in our thinking. I'm not sure that the person who could most clearly answer that question is here today, but I'll double-check with Rob to see if he would disagree with what I've said.

**Mr Rob Trotter:** Rob Trotter, planner with the city of Waterloo. The past practice in the municipality on the cleanup of a couple of sites we've had has been a three-way split. So we would likely encourage that.

**Mr Mazzilli:** I have a further question on that. Who would qualify for this? What you have are obviously some properties you have difficulties with that were owned by a private company; others that are owned by different levels of government. An example would be defence sites, which are probably some of the biggest costs to clean up. Are they going to be able to apply to

the rebuild fund if they're in a municipality, and would they come after provincial and municipal dollars in this fund to clean up those sites or would they be excluded from applying for a cleanup under that type of plan? Has AMO thought some of those things out?

**Mr Trotter:** I can't speak for AMO. I don't know what that association has done. In terms of the rebuild fund itself, this isn't something the city of Waterloo has mapped out in terms of a procedure or a policy in any regard.

**Mr Mazzilli:** I'm only throwing those out as cautions as you pursue this, because different levels have different responsibilities for different properties, and I don't want to see an agreement in place where it's, "Now we don't have to clean up our own. We'll just apply to the fund." So I throw that out as a caution and something for you to consider as you're pursuing this.

**Mrs Marie Bountrogianni (Hamilton Mountain):** Thank you for your presentation. It's excellent. I understand your concern about the municipalities taking on the cost of the liability and I like your solution in addressing that. Of course, the policy needs to be further developed. Are you concerned at all, though, that perhaps with this legislation, environmental liability might be lessened, and what effects that would have on the environment or on the municipality itself? Do you have any concerns about that?

**Mr Needham:** That could be a potential problem. Unfortunately, our environmental coordinator isn't here today. That's certainly a question we can take back and resubmit for consideration.

**Mrs Bountrogianni:** You have proposed a solution for the financial aspect of that problem.

**Mr Needham:** I think Julie is going to address that.

**Ms Julie Finley:** When we were looking at the sites, our primary concern was to get them cleaned up and get the health and safety concerns removed. So what we're hoping is that, just thinking on a very basic level, this fund needs to be established, and obviously there need to be guidelines and policies in place. The sites we feel would qualify are sites that are abandoned, that municipalities have acquired through tax sale or for whatever reasons, receivers and trustees. It would be the same scenario.

We haven't thought this out to the full extent when talking about defence sites. I don't know if they would be able to apply. We're hoping that people won't run away from the liability once this fund is established. The sites that we're thinking of more so are the ones that people have acquired through abandonment or foreclosures.

**Mr Christopherson:** Thank you for your presentation. I think you've focused on the two key concerns that the opposition parties have with this. One is the question of liability, and the issue of dollars, which is not too far from any issue that comes before us.

I was interested in the projects that you presented here today. Just to refresh my memory, you talked about private-public partnerships, but I don't recall whether you said anything about whether, even on a one-off basis,

you had any kind of participation or assistance from either of the senior levels of government in any of those projects. You did mention that you had that from the one—

**Ms Finley:** Yes, we did.

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**Mr Christopherson:** OK, I must have missed that. Maybe you could give me that again.

Also, I wondered if you'd had a chance to get any federal feedback on the idea of a fund, your "super-rebuild"—is that what you called it?—whether you had any comment at all, feedback from the feds on that.

**Mr Needham:** I don't think we have received any at this point. In terms of one of your previous questions, the city hall site was certainly one example where we did have some direct funding from the province. But I think we're still waiting for further comment from the federal government.

**Mr Christopherson:** That was the only one you had any participation in? Did you make application on the others?

**Mr Needham:** Some of these occurred prior to my coming on board, so I'm not able to—in fact, I think the only one that occurred during my stay on council was the Euclid Street townhouses on the Seagram site. Those I don't believe did, but I understand that the city hall—

**Ms Finley:** I just wanted to add that one of the things we wanted to focus on with Waterloo is that we've been very fortunate. We have very good corporate citizens who have a lot of dollars in their pockets, to be very blunt, and they've been able to spend the money to get these sites cleaned up. Waterloo has been fortunate because of that. Council very early on set this as a policy as well, so they've put significant dollars into the pot. We have been much luckier than Brantford or Hamilton. Our sites are minimized, the environmental concerns and contaminants aren't as serious, so we've been able to within our own resources. On the one occasion when we had to go to the province, we were able to get assistance. That was a few years ago. I don't know what the state would be now.

**Mr Christopherson:** It never does any harm to have a local cabinet minister either, as experience tells me.

I want to make a statement, and if you want to comment, that's fine. I know in Hamilton this legislation will be helpful. But without addressing the serious concern around liability, and again back to the dollars that you've raised, without that, there's just a real sense, certainly in Hamilton, that we're not going to get the same kind of economic bang in terms of redeveloping these lands as I think the government legitimately would like to see. I understand they're tight for money, but if you really want to move on this, then—especially as you've mentioned, Julie, in terms of the extent of the environmental damage, some of the sites we have are really—to get back our waterfront property when we were government, we had to put in \$10 million to clean up one particular site, which has now become a jewel in the community. But big bucks, and unless the dollars are

there from the senior levels of government, it's just not going to give the kind of momentum that we need. At least, that's our sense. I'm hearing something similar coming out of your part of the province.

**The Chair:** Thank you for coming down to Brantford and making your presentation here today.

PAUL URBANOWICZ

**The Chair:** I'm told Mr Urbanowicz has now joined us, so he will be our final presentation. Just a reminder, Mr Urbanowicz: we have 10 minutes for your presentation.

**Mr Paul Urbanowicz:** Thank you very much, Mr Chairman, members of the committee. My apologies for my appearance here. I had one of my employees who ended up off sick, so I'm doing the chief cook and bottle washer routine. I just came from the office and the plant.

I'll be very brief today. I've outlined what I have to say, and it's actually focused in on the site you will be seeing, which is in the ward that I've represented for over 11 years. That's the Northern Globe property. I'll certainly, as I've said in this brief here, be happy to answer any of the questions or elaborate on these points that I've made here after. It's pretty straightforward.

Basically, Northern Globe, which was formerly Domtar—most of us who have been around recognize the name Domtar—was closed down in 1996 and the machinery itself was sold. A receiver in the United States formally abandoned the site, leaving the site unsecured and open to vandalism. The parent company in the US left owing the city back taxes that have now amounted to \$810,000, without any recourse left to the city to collect, and we have on all counts tried to get money from this. We've been in touch with the US Attorney General, but to no avail. Through this period of time, break-ins and fires have caused a strain on municipal departments in manpower as well as dollars themselves in order to contain this site.

After the third fire, the medical officer of health in Brantford, Dr Doug Sider, after close scrutiny of the magnitude of the fire, the close proximity to the Brantford General Hospital and the evacuation of the neighbourhood, ordered the building demolished. The city does not own this site. We are the ones who have borne the brunt of having to get rid of this contaminated site, which in part is being done as we speak, which you will see when you arrive over there.

Basically, the actions that I view in this municipality and others of my counterparts throughout Ontario and through FCM across Canada—we've spoken a great deal about this. To date, just on this site alone Brantford has spent in excess of \$400,000. That was a fund we put forward to try to help remediate not just this particular site but Bay State Abrasives, which is another one that's not even a block away from the existing site that you will be visiting.

We also have the former Cockshutt's site down on Mohawk Street—I'm trying to think of the number of

acres—which is also contaminated, we know that for a fact, and you have the Massey property which backs on to that. So in excess of probably 20-plus acres of land, and we have not even scraped, at this point, the surface down at that end of the city.

Both the federal and provincial governments, in my estimation, must come forward with the appropriate funding to help to remediate these sites. Cities in Ontario and Canada, as we all know, are not in a financial position to do this. It is impossible, especially with the sites of the magnitude of what used to be Massey Ferguson, the foundry site area as well as the machine shops, as well as Cockshutt Plow Co, or White farm, as some of you might know.

When we initially moved in on the Northern Globe site, more problems were found. We found large containers containing solvents. We're not exactly sure what are in these, what the solvents are and what we have to do to get rid of them at this particular point in time. The medical officer of health, along with our own people, Terry Spiers and the environmental group of engineers here in the city, are looking at this. This is going to be undoubtedly another major cost for the city on top of this.

Federal and provincial governments in taxes would, in my estimation, make them accountable when cleaning up, and that is the companies that have left or are in the throes of leaving. If they are long-standing, good corporate citizens—and there are some good corporate citizens; we heard from the city of Waterloo and the Kitchener area and we have the same here within the city of Brantford that have remediated their own sites, cleaned them up and left them clean, and they are up for sale. We thank them for that.

We can't do it on our own. The taxes that have been garnered over the years from the sites at Domtar, Massey Ferguson and Cockshutt's from taxes that were brought back to the province and the federal government in everything from taxes on the goods that were being produced and income taxes that were given back to the governments over the years—there has to be something done. We have to have money back in order to clean these sites.

In my estimation, with this particular site, and I'm asking this committee to consider this, we're looking for at least 75% of what we've, at least at this point, put in to try to remediate this site. At \$400,000 the math is pretty easy. It's going to escalate to a lot more than that by the time we're through, that's obvious. We do not have the funds.

The other sites in this city alone, as I said briefly before, are going to run into the millions of dollars. We know that already. With back taxes, we're not going to be able to collect the money through these sites either. The one Massey site is in excess of \$3 million itself. If we take it over, legislation kicks in and we're going to be the ones left holding the bag upon the loss of the taxes that are owed as well as to remediate these sites.

I really hope that your committee, when you're considering not just Brantford, not just the Northern

Globe site but across Ontario—something has to be done. We're quite prepared to assist the province in lobbying the federal government as well to help out in whatever way they can. We will do whatever we can from the municipal end here in the city of Brantford. I'm open to your questions.

1610

**The Chair:** We've got about three minutes left. I'm going to split that, because I gave you one chunk: half to the NDP and half to the government.

**Mr Christopherson:** More than anything, Councillor, I want to thank you because I think you have underscored the need for dollars to be upfront if we're really going to see some movement.

Obviously, if the government does decide to free up some money—at this point we're not hearing a whole lot suggesting they're going to—if they do, that argument will take care of itself. In the absence of that, where do you think this legislation will leave you and the sites you're familiar with in your ward?

**Mr Urbanowicz:** Basically in limbo at this particular point in time. The Penman's site is not as heavily contaminated. It's a very old site on the other side. We just had the buildings taken down and it's not too bad, but it sits by a major water source, which is the Grand River. We don't know until we start tapping into the soil what we're really into in that area alone.

Right now I don't see the legislation with enough teeth; there are not enough teeth in it to actually make corporations that feel they're just going to walk away, as they did with the Northern Globe site, into the United States—they walk off into the sunset and we're left holding the bag. That's basically it.

**Mr Kells:** Councillor, I'm a little curious about the Massey site. Verity is still in existence. In fact, they're bigger and better than Massey were in the tail end of Massey's days. But what happened there? How did they get out of town without cleaning the site up or without still having some kind of responsibility? They wouldn't fall into the fly-by-night category.

**Mr Urbanowicz:** Basically, they were able to divest themselves slowly of the property. They divested themselves of all their machinery, moved the company just across the border into Buffalo at the time, when they did

go down—I think it was 1986, 1987—and had an industrial auction, brought back machinery and left the taxpayers—if memory serves me correctly, I'm not sure if it's federal and provincial money that they had borrowed to the tune of \$300 million. They were able to get away with it the same way that most of them do: move south of the border and just basically divest yourself.

**Mr Kells:** Whom did they divest the land to?

**Mr Urbanowicz:** They sold it, I believe at this point in time, and you're asking me to go back a few years here in my memory—

**Mr Kells:** Generally speaking. Somebody must own it.

**Mr Urbanowicz:** It was sold to a private consortium at the time. We got a bit of the property. I believe the municipality was able to take some of the property at the back end of the Henry Street property and they sold off. But we were not able to recoup the taxes. As I stated, the current owner in the property, which would have been Verity South, which is along Greenwich Street across from Cockshutt, is in arrears over \$2 million, and that is saying right now, the current owner.

**Mr Kells:** At least you have them in your gun sight.

**Mr Urbanowicz:** We have them in our gun sight, but I can tell you this: if we were to take the site over, they would go bankrupt.

**Mr Kells:** Not much point in pulling the trigger.

**Mr Urbanowicz:** There isn't really, not at that point in time.

**The Chair:** Thank you very much. We appreciate your coming before us and making your comments.

With that, committee, that's the end of our presentations, but we have an opportunity to see some of the sites in question. Mr Levac is prepared to lead us, and if everyone else wants to adjourn to the bus we'll allow Mr Levac the opportunity to show us—

**Mr Levac:** Mr Chairman, in compliments to Mr Urbanowicz, he's offered an opportunity in his ward, when we get there, to speak to you specifically about the issue of the site. So he's volunteered his time to do that for us, and I appreciate that. I want to thank you for that.

**The Chair:** With that, the committee stands adjourned.

*The committee adjourned at 1615.*

## **STANDING COMMITTEE ON GENERAL GOVERNMENT**

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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 15 October 2001

# Journal des débats (Hansard)

Lundi 15 octobre 2001

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 15 October 2001

Lundi 15 octobre 2001

*The committee met at 1552 in committee room 1.*

## SUBCOMMITTEE MEMBERSHIP

**The Vice-Chair (Mr Norm Miller):** I'd like to call this meeting to order. I welcome everyone here to the standing committee on general government meeting today to consider Bill 56 clause-by-clause. We have some business to begin with.

**Mr Mike Colle (Eglinton-Lawrence):** I move that the membership of the subcommittee on committee business be revised as follows: That Mr Prue be appointed in place of Mr Marchese. That seems like a good thing.

**Mr Rosario Marchese (Trinity-Spadina):** Hear, hear.

**The Vice-Chair:** Any discussion? Shall I put the question? All in favour? Carried.

## SUBCOMMITTEE REPORT

**Mr Colle:** Mr Chairman, I also have a report from the standing committee on general government.

Your subcommittee considered the method of proceeding on Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters, and on Bill 77, An Act to amend the Vital Statistics Act and the Child and Family Services Act in respect of adoption disclosure, and recommends the following:

Re Bill 56:

(1) That the committee schedule clause-by-clause consideration of Bill 56 on Monday, October 15, 2001;

(2) That the deadline for receipt of amendments be 5 pm on Friday, October 12, 2001.

Re Bill 77:

(1) That the committee schedule public hearings on Bill 77 in Toronto on November 5 and 7, 2001;

(2) That the clerk place an advertisement on the Ontario parliamentary channel and on the Internet. Additionally, notice will be provided to provincial news media by press release;

(3) That groups be offered 15 minutes in which to make their presentations, and individuals be offered 10 minutes in which to make their presentations;

(4) That the Chair, in consultation with the clerk, make all decisions with respect to scheduling;

(5) That the subcommittee determine whether reasonable requests by witnesses to have their travel expenses paid will be granted;

(6) That each party be allowed 10 minutes to make an opening statement if they so desire;

(7) That the research officer prepare a background paper containing relevant information from other jurisdictions as well as a summary of recommendations;

(8) That the committee commence its clause-by-clause consideration of Bill 77 on a date to be determined upon receipt of a recommendation from the subcommittee on committee business;

(9) That the deadline for receipt of amendments be Friday, November 30, 2001;

(10) That the Chair, in consultation with the clerk, make any other decisions necessary with respect to the committee's consideration of the bill.

**The Vice-Chair:** Any discussion? Shall I put the question? All those in favour? Any opposed? No. Carried.

BROWNFIELDS STATUTE LAW  
AMENDMENT ACT, 2001LOI DE 2001 MODIFIANT DES LOIS  
EN CE QUI CONCERNE  
LES FRICHES CONTAMINÉES

Consideration of Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters / Projet de loi 56, Loi visant à encourager la revitalisation des terrains contaminés et apportant d'autres modifications se rapportant à des questions environnementales.

**The Vice-Chair:** We will now begin clause-by-clause consideration of Bill 56, An Act to encourage the revitalization of contaminated land and to make other amendments relating to environmental matters.

Are there any comments, questions or amendments to any section of the bill and, if so, to which section?

**Mr Dave Levac (Brant):** Mr Chairman, do you want to review it as each section or just come up with numbers or try to chronologically—

**The Vice-Chair:** We'll go through the bill, starting with section 1.

**Mr Levac:** In section 1, I don't have a motion; a question of clarification regarding expenditure of money from the government. I understand that only a minister can

provide that opportunity. The question I have would be regarding the education portion of the tax. There was question by deputation of almost every committee during the hearings that some form of education tax process be addressed by the government other than municipalities. Could that be clarified for me as to whether or not that's amendable?

**Mr Morley Kells (Etobicoke-Lakeshore):** I don't have any clarification, except that we haven't addressed it. We've heard it and taken it on, but we haven't taken any action.

**Mr Levac:** You haven't taken any action on that. Thank you for the clarification, Mr Kells. After that, do I understand it's not appropriate for non-ministerial amendments to be presented on expenditure of monies? In other words, I could not come with an amendment that says I'd like the education tax reduced, equal to that of the municipal portion of property tax?

**The Vice-Chair:** I believe that's correct.

**Mr Levac:** Thank you.

**The Vice-Chair:** OK. Section 1. Shall section 1 carry? Any opposed? One opposed. I declare the section carried.

Section 2. Mr Levac?

**Mr Levac:** I think I've got this right, a motion to be moved in committee.

Subsection 2, section 36 of the bill, sections 168.3.1, the Environmental Protection Act—am I too far?

**The Vice-Chair:** We'll try to follow an order, if we can, Mr Levac.

**Mr Levac:** I understand.

**Mr Kells:** I move that subsection 2(1) of the bill be amended by adding the following definitions to subsection 1(1) of the Environmental Protection Act:

“‘certification date’ means, in respect of a record of site condition, a date determined in accordance with the regulations that is not later than the date the record of site condition is filed in the environmental site registry;

“‘fiduciary’ means an executor, administrator, administrator with the will annexed, trustee, guardian of property or attorney for property, but does not include a trustee in bankruptcy or trustee in bankruptcy representative;

“‘fiduciary representative’ means, with respect to a fiduciary, an officer, director, employee or agent of the fiduciary, or a lawyer, consultant or other adviser of the fiduciary who is acting on behalf of the fiduciary;

“‘municipal representative’ means, with respect to a municipality, an officer, employee or agent of the municipality, or a lawyer, consultant or other adviser of the municipality who is acting on behalf of the municipality;

“‘receiver representative’ means, with respect to a receiver, an officer, director, employee or agent of the receiver, or a lawyer, consultant or other adviser of the receiver who is acting on behalf of the receiver;

“‘secured creditor representative’ means, with respect to a secured creditor, an officer, director, employee or agent of the secured creditor, or a lawyer, consultant or

other adviser of the secured creditor who is acting on behalf of the secured creditor;

“‘trustee in bankruptcy representative’ means, with respect to a trustee in bankruptcy, an officer, director, employee or agent of the trustee in bankruptcy, or a lawyer, consultant or other adviser of the trustee in bankruptcy who is acting on behalf of the trustee in bankruptcy.”

These definitions are not changed at all.

**1600**

**The Vice-Chair:** Any discussion? Shall I put the question?

**Mr Marchese:** Yes, go ahead.

**The Vice-Chair:** All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that section 2 of the bill be amended by adding the following subsection:

“(1.1) Section 1 of the act, as amended by the Statutes of Ontario, 1992, chapter 1, section 22, 1998, chapter 35, section 1, 2000, chapter 26, schedule F, section 12 and 2001, chapter 9, schedule G, section 5, is further amended by adding the following subsection:

“Health or safety

“(4) For the purposes of this act, a danger to existing water supplies that are used for human consumption shall be deemed to be a danger to the health or safety of persons.”

**The Vice-Chair:** Any discussion? All those in favour? I declare the amendment carried.

**Mr Kells:** I move that clause 19(5)(a) of the Environmental Protection Act, as set out in subsection 2(3) of the bill, be amended by striking out “within 10 days of taking or being appointed to take possession or control of the property,” and substituting “within 10 days after taking or being appointed to take possession or control of the property, or within 10 days after the issuance of the order.”

**Mr Levac:** Does this clarify the issue from some of the presentations that they wanted to be able to get to the property beforehand?

**Mr Kells:** Basically the purpose of the provision is to make applicable rules consistent with the federal Bankruptcy and Insolvency Act. I think that's the thrust behind it.

**The Vice-Chair:** Any discussion?

**Mr Marchese:** That explains it.

*Interjections.*

**Mr Kells:** You give me the script and I'm going to follow it.

**The Vice-Chair:** Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 148.1(1) of the Environmental Protection Act, as set out in subsection 2(22) of the bill, be struck out and the following substituted:

“Parts XV.1 and XV.2: Director may cause things to be done

“(1) If, but for part XV.1 or XV.2, the minister, the director or a provincial officer would be authorized by

this act to make an order requiring a person to do a thing, the director may cause the thing to be done.”

**The Vice-Chair:** Any discussion?

**Mr Marchese:** This doesn't appear to be legal language.

**Mr Kells:** It doesn't?

**Mr Marchese:** It's a strange thing. I've never seen it like this: “an order requiring a person to do a thing.” I think it's odd as a construction. Is this what you say in legal kind of parlance, “to do a thing”?

**The Vice-Chair:** Would you like some clarification on that?

**Mr Marchese:** Yes, sure, from anyone.

**The Vice-Chair:** Please state your name and position for the record.

**Mr James Flagal:** My name is James Flagal. I'm with the Ministry of the Environment, legal services branch.

**Mr Larry Fox:** My name is Larry Fox. I'm counsel for the legal services branch, Ministry of the Environment.

**Mr Flagal:** Mr Marchese asked about using the language “a thing to be done.” Actually in the Environmental Protection Act it does use that exact language, believe it or not.

**Mr Marchese:** Really?

**Mr Flagal:** It does track that, and in fact using the language of causing a thing to be done or referring to a thing is something that often occurs in the Environmental Protection Act. It's in order to provide for the broadest scope possible.

**Mr Marchese:** It's just a very odd construction; “requiring a person to do a thing” seemed to me odd, that's all. I thought I would ask for the purposes of some clarification, but if that's been accepted already in the books and by law, what can I say?

**Mr Flagal:** Actually using the word “thing” when doing legislative drafting has been done in many statutes.

**Mr Marchese:** God bless. OK.

**The Vice-Chair:** Any further discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 150(2.2) of the Environmental Protection Act, as set out in subsection 2(25) of the bill, be amended by striking out “the gross negligence or wilful misconduct of the receiver or trustee in bankruptcy” and substituting “the gross negligence or wilful misconduct of the receiver or trustee in bankruptcy or of a receiver representative or trustee in bankruptcy representative.”

**The Vice-Chair:** Any discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that section 168.1 of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be amended by striking out the definition of “certification date” and by adding the following definitions:

“owner” includes a person prescribed by the regulations; (‘propriétaire’);

“risk assessment” means an assessment of risks prepared in accordance with the regulations by or under the supervision of a qualified person; (‘évaluation des risques’).”

**Mr Levac:** Can you define “qualified person”?

**The Vice-Chair:** Who would like to define “qualified person”?

**Mr Flagal:** “Qualified person” is already defined. It is defined right at the opening of part XV.1 and you can find that on page 11 of Bill 56. Page 10 is where part XV.1 begins. “Qualified person” in the bill—it's section 168.1—“means a person who meets the qualifications prescribed by the regulations.”

**Mr Levac:** Is that the regulation that prescribes certain groups or individuals?

**Mr Flagal:** Yes, the regulation-making authority in relation to qualified persons is very broad. It will set out what the qualifications are that a person has to meet, what type of insurance they may carry and which body may regulate these sorts of qualified persons. You can find that, the regulation-making authority in respect to qualified persons, on page 33, clause 176(10)(e). So I'm looking at page 33, clause (e). That's where you'll get a sense of the regulation-making authority for qualified persons.

**Mr Levac:** Thank you for that.

**The Vice-Chair:** Any further discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that the definition of “phase two environmental site assessment” in section 168.1 of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be amended by striking out “to determine the concentration of one or more contaminants in water, surface soil and subsurface soil” and substituting “to determine the location and concentration of one or more contaminants in the natural environment.”

**The Vice-Chair:** Any discussion?

**Mr Marchese:** Mr Kells, I'm assuming the natural environment simply encompasses water, surface soil and subsurface soil, and that's why we did that.

**Mr Fox:** There's another reason. It also encompasses sediments, and there was a concern that the draft did not deal with sediments and contaminants in sediments. So this expands the reach. Secondly, you'll notice—this is partially in response to certain of the stakeholders—it refers to location. That's an additional element that some of the written submissions dealt with. “Natural environment” is defined in the act. It means “the air, land and water, or any combination or part thereof.” It's very broad.

**The Vice-Chair:** Any further discussion? All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that paragraph 2 of subsection 168.4(2) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out and the following substituted:

“2. The name of the person filing the record of site condition and the names of any other owners of the property.”

**The Vice-Chair:** Any discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

1610

**Mr Kells:** I move that subsection 168.4(6) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out and the following substituted:

“Transition

“(6) If, pursuant to the ministry publication entitled ‘Guideline for Use at Contaminated Sites in Ontario,’ originally dated June 1996 and later revised, a record of site condition in respect of a property was submitted to the ministry before this section came into force, the owner of the property may, despite subsections (1) and (2), file the record of site condition in the registry if both of the following criteria are satisfied:

“1. The ministry has acknowledged in writing receipt of the record of site condition.

“2. The owner of the property files a notice in the registry certifying that the requirements prescribed by the regulations have been complied with.

“Same

“(7) If a record of site condition is filed in the registry under subsection (6),

“(a) the notice referred to in paragraph 2 of subsection (6) shall be deemed to be part of the record of site condition;

“(b) the land use specified in the record of site condition shall be deemed to have been specified as the type of property use under paragraph 3 of subsection (2); and

“(c) the record of site condition shall be deemed to contain,

“(i) a certification under sub-subparagraph 4 i A of subsection (1), if the record of site condition indicates that a background assessment or restoration approach was used,

“(ii) a certification under sub-subparagraph 4 i B of subsection (1), if the record of site condition indicates that a generic full-depth assessment or restoration approach was used,

“(iii) a certification under sub-subparagraph 4 i C of subsection (1), if the record of site condition indicates that a generic stratified assessment or restoration approach was used, or

“(iv) a certification under subparagraph 4 ii of subsection (1), if the record of site condition indicates that a site specific risk assessment approach was used.”

**The Vice-Chair:** Any discussion?

**Mr Marchese:** Could I get some clarification as to what this means by way of clarification over the transition.

**The Vice-Chair:** Who would like to clarify that?

**Mr Kells:** In one sentence—and then I’m sure the staff will clear it up—the purpose of the motion is to clarify how grandfathering would work.

**Mr Marchese:** That’s really great. What about another little explanation?

**The Vice-Chair:** Yes. Who else would like to clarify it?

**Mr Flagal:** Bill 56, in part XV.1, basically reflects a framework for addressing contaminations of properties that was introduced by the ministry through the contaminated site guideline in 1996. That’s where the record of site condition was introduced as concept. What this provision does is it allows a person to file a record of site condition in the registry that was actually filed with the ministry under the guideline, so long as they can certify a particular thing that’s going to be set out in the regulation.

This is a transitional provision. It allows those records of site condition to be eligible for the protections from orders that are contained in section 168.7. That was already in the bill. Then the other subsections you see added in the motion, subsection (7) in particular, basically provide some transitional matters that had not been dealt with in the original draft of Bill 56 that need to be cleared up; for instance, what happens if there is a different use under 168.7, if there is a change in use and you lose your protection from orders. That also had to be related, as an example, to the old records of site condition. That’s what you see with respect to page 11 of the motions.

**Mr Fox:** The terminology in the current records of site condition does not use the same words we use in the act. In a way, what you see on page 11 translates words like “background assessment” or “restoration approach” into the concepts that are used in the act now.

**The Vice-Chair:** Thank you, Mr Fox and Mr Flagal. Any further discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that section 168.6 of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be amended by adding the following subsection:

“Restriction

“(1.1) A certificate of property use shall not require an owner of property to take any action that would have the effect of reducing the concentration of a contaminant on, in or under the property to a level below the level that is required to meet the standards specified for the contaminant in the risk assessment.”

**The Vice-Chair:** Any discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.7(1) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be amended by striking out “in respect of a contaminant that is on, in or under the property and that was discharged into the natural environment before the certification date” and substituting “in respect of a contaminant that was discharged into the natural environment before the certification date and was on, in or under the property as of the certification date.”

**The Vice-Chair:** Any discussion?

**Mr Levac:** I have one—just the way my mind works—regarding “the property.” What we know now is

that with the way leaching takes place, a lot of the contaminants actually end up off the property, on other subsequent properties. Is that accounted for in the legislation?

**Mr Flagal:** Yes, it is. If you look at subsection 168.7(4), that relates to the situation of if, unfortunately, contaminants are left there and they start migrating off the property. That would be the motion that is on page 15. This also just basically strikes out—it was already addressed in the bill in subsection 168.7(4). This is just a clarification of what subsection 168.7(4) said.

**Mr Fox:** The present subsection clarifies that the record of site condition is about the property; in a way, the box. This so-called immunity attaches to that box. The language you see here in a way, if you like, shows that the RSC deals with a snapshot of the box as of the certification date in relation to a prior discharge, because the record of site condition will be linked to the certification date.

**The Vice-Chair:** Any further discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.7(3) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out.

**The Vice-Chair:** Any discussion?

**Mr Marchese:** Why are we doing that, Morley? What does it say there?

**Mr Kells:** It says here that this motion would delete subsection 168.7(3). Are you happy?

**The Vice-Chair:** Would you like any more clarification, Mr Marchese?

**Mr Marchese:** Yes, it would be useful to have some clarification.

**Mr Flagal:** The reason, the clarification, is the motion you just voted on before. Because of the wording change, it is now clear by the wording in subsection 168.7(1) that your protection from orders would never cover new discharges. Because it is clear from the new wording that it is not going to cover new discharges, subsection 168.7(3) is just repetitive. It is not necessary.

**Mr Marchese:** That was good.

**The Vice-Chair:** Any further discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

1620

**Mr Kells:** I move that subsection 168.7(4) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out and the following substituted:

“Contaminants that move to other property

“(4) Subsection (1) does not apply if, after the certification date, any of the contaminant moved from the property to which the record of site condition relates to another property.”

**Mr Levac:** I need a clarification on this one then. Am I reading this right: that it basically says that subsection (1) doesn't apply—and when I say doesn't apply, that means you can't use subsection (1) after the certification

date when the contaminant moves from the box? And are we only talking about that property, or the subsequent property that it moves to?

**Mr Flagal:** Remember that subsection 168.7(1) is the protection from orders. When you file a record of site condition, a person gets protection from orders for contaminants that are on the property as of the date and that have already been discharged into the natural environment, meaning that they are in the water or they are in the soil. What subsection (4) says is that your protection from orders disappears if those contaminants move from your property to another property.

**Mr Levac:** So containment is the responsibility of the—

**Mr Flagal:** Exactly. So the record of site condition, once filed—hopefully the contamination has been addressed.

**Mr Levac:** That I understand. OK.

**The Vice-Chair:** Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.7(6) of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out and the following substituted:

“Contravention of certificate of property use, etc.

“(6) Despite subsection (1), an order may be issued under section 157 against a person who contravenes a term or condition of,

“(a) a certificate of property use; or

“(b) an order made under this act in respect of risk management measures described in a record of site condition filed in the registry under subsection 168.4(6).”

**The Vice-Chair:** Any discussion? Shall I put the question? All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that section 168.8 of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be amended by,

(a) striking out “as a result of the presence of a contaminant that was on, in or under the property before the certification date, there is danger to the health or safety of any person, including danger to any existing water supplies” in subsection (1) and substituting “as a result of the presence of a contaminant that was on, in or under the property as of the certification date, there is danger to the health or safety of any person”; and

(b) striking out “including danger to any existing water supplies” in subsection (2).

**Mr Levac:** A clarification on just the rationale when you replace the word “before” with “as of.”

**The Vice-Chair:** Who would like to respond?

*Interjection.*

**Mr Levac:** In (a), they use the words that we're taking out, “before the certification date,” substituting it with “as of the certification date,” which tells me that you are eliminating stuff beforehand. Is there a rationale behind that?

**Mr Flagal:** Yes. The reason you're seeing the change in wording in clause (a) is because of the way that

subsection 168.7(1), which you just voted on about two or three motions ago, was amended. The wording in this 168.8 has to mirror exactly the wording in 168.7. It used to say "before the certification date," and in the old 168.7, again, there wasn't that language "as of the certification date." The reason section 168.7, granting protection from orders, was changed to "as of the certification date" is to say what Mr Fox said; you're getting protection—it's like a snapshot—for the contaminants that are in, on or under your property already discharged into the natural environment, water, soil, and that are there as of the certification date, which would likely be as of the date that you tested for them. So that is why clause (a) is there.

Remember, you're taking away protection from orders at this point. So you're only getting protection for the contaminants that are there as of the certification date. And now, in this section, which is in relation to "What if we issue this emergency order?" we can only issue these emergency orders in relation to these contaminants that are there as of the certification date. They have to mirror each other. The protection has to mirror exactly what the emergency order says.

**Ms Marilyn Mushinski (Scarborough Centre):** I think that this should say, "I move that section 168.8(1)," because I was looking to see—there are several different subsections to 168.8. It says, "I move section 168.8 of the" EPA "as set out under subsection 2(35)." I was busy looking to see where the wording is and it is actually under the second part, on page 17, of 168.8(1). Should that not say sub (1)?

**The Vice-Chair:** I'll have the legislative counsel respond.

**Mr Doug Beecroft:** This motion makes a change to subsection (1) and makes another change to subsection 2. So section 168.8 is being changed in two ways. There are changes in sub (1). The second change is in sub (2).

**Ms Mushinski:** OK. I understand.

**The Vice-Chair:** Any further discussion? I shall now put the question. All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that section 168.9 of the Environmental Protection Act, as set out in subsection 2(35) of the bill, be struck out.

**The Vice-Chair:** Any discussion?

**Ms Mushinski:** That's the same thing as before; 168.9 has several different sections.

**Mr Kells:** Be that as it may, I just struck it out.

**Ms Mushinski:** Is the whole thing being struck out?

**Mr Kells:** This is the short answer. They can give you the long answer. This motion responds to the concerns of several stakeholders who were concerned that section 168.9 imposed registration on title requirements in the case of so-called level 1 risk assessments since such a requirement was not now imposed. Level 1 assessment involves no management measures.

**Ms Mushinski:** OK. So the whole section is being struck out.

**Mr Kells:** That's right.

**Ms Mushinski:** All right. I certainly recall that. They'll be happy with that, I would think; except that 168.10 will now become 168.9, right, if the whole thing is being struck out?

**Mr Beecroft:** After the bill goes through the committee, legislative counsel rennumbers it.

**Ms Mushinski:** It'll do all those corrections?

**Mr Beecroft:** You don't need to worry about the renumbering.

**Ms Mushinski:** All right. That suits me.

**The Vice-Chair:** Any further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Levac:** I move that section 168.3.1 of the Environmental Protection Act, as set out in subsection 2(36) of the bill, be struck out and the following substituted:

"Prohibition on certain changes of use

"168.3.1(1) Subject to subsection (2), a person shall not,

"(a) change the use of a property in a manner prescribed by the regulations; or

"(b) construct a building if the building will be used in connection with a change of use that is prohibited by clause (a).

"Exception

"(2) Subsection (1) does not apply if,

"(a) a record of site condition has been filed in the registry in respect of the property under section 168.4; and

"(b) the use specified under paragraph 3 of subsection 168.4(2) in the record of site condition is the use to which the property is changed under clause (1)(a)."

**The Vice-Chair:** Further discussion?

1630

**Mr Marchese:** I was just wondering whether Dave has an explanation for that. I was a bit concerned—

**Mr Levac:** The bill, if enacted, will require the record of site condition for every change of the use of form: industrial, commercial, residential or parkland. No definitions are provided for what is meant by industrial or commercial uses. Some commercial uses can be quite benign and this requirement can, in some cases, be unnecessarily onerous. How will these provisions be applied to mixed uses, such as conversion of the upper stories of a commercial building and a downtown area of apartments? In Brantford, for example, we have a very old downtown and there are brownfield sites designated. If you have multi-use of the building as you construct it, it may have an implication of whether you may or may not be able to use that property, even though quite clearly one portion of that building can be used under the subsection.

**Mr Marchese:** My concern about that was that the current provision protects a homeowner or a tenant and their children from possible contamination. I wondered whether this complicates that protection that I thought is currently in place. I'm not sure whether you have an opinion on that, but that was my concern.

**Mr Kells:** I could give you a couple of comments.

**Mr Marchese:** Or Monsieur Kells, and then, of course, whatever you feel is necessary.

**Mr Kells:** They can mop up. Basically this bill expresses the policy, before there is a change to a more sensitive land contamination on the site—the current provisions have a lot of flexibility. For example, if the concern is that the provision is too broad, exempting regulations can be made under the EPA, and terms not defined in the act can be defined by regulation.

I think what the honourable member here is doing is responding to situations as he sees them in Brantford.

**Mr Marchese:** That he sees have been—

**Mr Kells:** Situations that he sees are existing in Brantford. I don't think the bill can be quite that specific.

**The Vice-Chair:** Any further discussion? Shall I put the question? All those in favour? Opposed? I declare the amendment lost.

**Mr Kells:** I move that section 168.11 of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out the definitions of “fiduciary”, “fiduciary representative”, “municipal representative”, “receiver representative”, “secured creditor representative” and “trustee in bankruptcy representative.”

**The Vice-Chair:** Further discussion? I shall now put the vote. All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.14(1) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “during the period described in subsection (4)” and substituting “in respect of the period described in subsection (4).”

**The Vice-Chair:** Further discussion? I shall now put the vote. All those in favour? Any opposed? I declare the vote carried.

**Mr Levac:** I move that subsections 168.14(4) and (5) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be struck out and the following substituted:

“Time period

“(4) Subsection (1) only applies to the municipality or municipal representative in respect of the period that begins on the day the municipality became the owner of the property by virtue of the registration of the notice of vesting and ends on the fifth anniversary of that day.

“Extension of period

“(5) On application by the municipality, the director shall extend the period referred to in subsection (4), before or after it expires and on such terms or conditions as the director considers appropriate, if,

“(a) the municipality intends to remediate the property and, having regard to the cost and any other factors, the municipality requires additional time to prepare for or perform the remediation;

“(b) the municipality is not using the property for a municipal purpose and is actively attempting to sell the property; or

“(c) the director considers an extension appropriate for any other reason.”

**The Vice-Chair:** Mr Levac, do you want to explain the motion?

**Mr Levac:** It's liability protection from the Ministry of the Environment on orders for municipalities on properties acquired as a result of tax sales; must be based on the nature and size of the property, and the remediation strategies selected in the period of exemption from liabilities should be negotiated prior to the commencement and should extend over the entire anticipated period of remediation; basically, in a nutshell, trying to provide the municipalities with an opportunity to encapsulate all the problems that they incur during the remediation process.

**Mr Marchese:** I just wanted to say that I was a bit concerned by the word “shall” in section 5, “On application by the municipality, the director shall...” It doesn't say “may”, it says “shall.” If any of those conditions apply, the director will have to do it. So I was concerned about “shall.” If it had “may,” it would be better. If you dropped (c), it could be supported by me. I don't know what the government has by way of an explanation on this. I found “shall” too prescriptive and (c) is a bit of a complication.

**Mr Levac:** A comment on process: is a friendly amendment or an amendment to the amendment acceptable? I don't know what the process is, so if I could get that clarified. I don't know whether or not that is permissible. I just need a clarification on that. My understanding is that I don't think it is. I don't know if amendments to the amendments are acceptable. I think that is.

**The Vice-Chair:** I'll get clarification from the clerk. With the unanimous consent of the committee, you can make an amendment to the amendment.

**Mr Levac:** I can accept those two.

**Mr Marchese:** But I wonder if the government is going to defeat it, so it doesn't really matter. We should hear from Mr Kells.

**Mr Kells:** We are going to be voting against it, but we don't really have too much conflict with it. It's just that we don't feel his amendment does what we are trying to get done in the locking up of timelines. I don't know how good that is, but that's it.

**Mr Marchese:** They're not going to support it.

**The Vice-Chair:** Would you like some further explanation, Mr Levac?

**Mr Levac:** Yes, so that I can take it back so people understand what the—

**Mr Fox:** There's a government motion on page 23 that deals with the two to five years. So that's the same. The first part of your motion is addressed by that. The difference is on the extension of period. The current provision provides for an extension in the discretion of the director, which is Mr Marchese's point. The difference is that the policy in the bill is that this can be negotiated on a case-by-case basis in relation to what is now a five-year period and that it's not a good idea as a matter of policy to require the director to extend it. That's the distinction. In a way, (c) is the same as the status quo in the bill except it's a weird mixture of a requirement when

one forms an opinion, which to me amounts to a discretion, the same thing. The difference is really (a) and (b).

**Mr Levac:** If I may continue, so that I'm clear in my head, so when I have to go back to my municipality and describe to them why it got defeated, (a) and (b) are the causes for concern regarding the time frame in which the government wants to proceed in this area. Too much discretion, am I getting that right, would be provided by the director, or not enough?

**Mr Flagal:** Yes, that's exactly it. With the use of "shall" in subsection (5), it again is not enough; "shall" is binding the director. The current provision, as you know, provides an extension that the director "may" grant. It is discretionary on such terms and conditions.

Going back to the municipality, the reasons that are put there as (a) and (b), I would envision that a municipality, if five years had elapsed and we were in the midst of remediating the property or in the midst of doing a tax sale, would go to the director and submit, "These are the actions that were taken. This is what's happening." From the ministry's point of view, the most important thing of course is that the municipality is there and basically knowing what's going on in the property and has taken control of the property. These can be completely accommodated under the current subsection (4).

**Mr Levac:** That last sentence probably sold me more to back off than any other reason.

**Mr Flagal:** The current subsection (4), absolutely the municipality can come to the director after the end of five years and say, "These are the circumstances. We need an extension." That's exactly why we put subsection (4) in there, to allow for flexibility on a case-by-case basis. Five years, automatic; after five years, let's come talk to the director, tell us what's going on with the property.

1640

**Mr Levac:** Very good. Thank you. I appreciate that.

**The Vice-Chair:** Thank you for the explanation, Mr Flagal. I shall now put the question. All those in favour?

**Mr Levac:** I will still vote for it.

**The Vice-Chair:** Those opposed? I declare the amendment lost.

**Mr Kells:** I move that subsection 168.14(4) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out "the second anniversary" and substituting "the fifth anniversary."

**The Vice-Chair:** Any further discussion?

**Mr Marchese:** Just a question. The municipality is not required to comply with an order if the order did not arise from their gross negligence. While I understand that—and I guess we're trying to protect the city in some way—who's responsible for the cleanup? What happens there? How is the public health protected?

**Mr Flagal:** What we are talking about are of course orphaned sites, abandoned sites. This is what the ministry has been doing with both secured lenders and municipalities who are often the persons left holding abandoned sites; secured lenders because a debtor has basically gone, municipalities because there's obviously

been a failed tax sale and they take ownership. It is not only in those situations of gross negligence or wilful misconduct where orders can be issued, but also in something called "exceptional circumstances." That's set out in section 168.15 of the current Bill 56. The key thing, the reason why the exceptional circumstances order is there, is exactly to address the situation.

Let us say that the municipality is suddenly left holding a particular piece of property after a failed tax sale and there are a number of drums of waste on the property. Those need to be secured. What the exceptional circumstances order tells the municipality is that they're not responsible for the historical contamination, to go in and clean up the site, but they are responsible to secure it, to make sure there is no danger to health or safety of any person, that there's going to be no danger to the environment. They'll take those immediate actions. The reasons why secured lenders and municipalities in the past were concerned about taking possession of those properties was because they didn't want to become liable for the historical contamination. That's what this clarifies. They are not liable for historical contamination, but if there are exceptional circumstances that you see—168.15—one of those dangers or risks of damage to the environment, then the director can require them to take action.

**Mr Marchese:** OK, seems reasonable. Thank you.

**The Vice-Chair:** Any further discussion? I shall now put the question. All those in favour? Any opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.15(2) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be struck out and the following substituted:

"Restriction if record of site condition

"(1.1) If a record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property, no order shall be issued under subsection (1) unless the director has reasonable grounds to believe that, as a result of the presence of a contaminant that was on, in or under the property as of the certification date, there is danger to the health or safety of any person.

"Scope of order

"(2) An order under subsection (1) may only require the municipality, within such times as are specified in the order, to comply with such directions specified in the order as are reasonably necessary to ensure that,

"(a) none of the circumstances listed in subsection (1) exist, if no record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property; or

"(b) there is no danger to the health or safety of any person if a record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property."

**The Vice-Chair:** Any discussion? I shall now put the vote. All those in favour? Opposed? I declare the amendment carried.

**Mr Levac:** I move that section 168.15 of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by adding the following subsections:

“Exception

“(5) A municipality is not required to comply with an order under subsection (1) if,

“(a) the order did not arise from the gross negligence or wilful misconduct of the municipality or of a municipal representative; or

“(b) not later than 10 days after being served with the order, or within such longer period as may be specified by the director in the order, the municipality notifies the director that it has abandoned, disposed of or otherwise released its interest in the property to which the order relates.

“Notice under subs. (5)

“(6) Notice under clause (5)(b) must be given in the manner prescribed by the regulations.

“Extent of obligation

“(7) The obligation of a municipality to incur costs to comply with an order under subsection (1) is limited to the value of the property to which the order relates on the date the municipality is served with the order, less the municipality’s reasonable costs of holding or administering the property, unless the order arose from the gross negligence or wilful misconduct of the municipality or a municipal representative.”

**The Vice-Chair:** Mr Levac, do you wish to comment on that amendment?

**Mr Levac:** I have to make sure I’m reading from the right notes in the pages one of these days. Municipalities should be offered the same level of protection as receivers, trustees in bankruptcy and fiduciaries when they become the owners of the brownfield site as the result of a tax sale.

**Mr Marchese:** What section is this again? What subsection?

**Mr Levac:** Section 168.15, subsection 2(38).

**The Vice-Chair:** Further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment lost.

**Mr Kells:** I move that section 168.15 of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by adding the following subsections:

“When notice of order filed in registry

“(5) The director shall file notice of an order under subsection (1) in the environmental site registry in accordance with the regulations if a record of site condition has been filed in the registry under section 168.4 with respect to the property.

“Notice of compliance with order

“(6) If notice of an order has been filed in the registry under subsection (5) and the director is satisfied that the order has been complied with, the director shall file notice of the compliance in the registry in accordance with the regulations.

“Filing of new record of site condition

“(7) If notice of an order has been filed in the registry under subsection (5) and the director is satisfied that the

order has been complied with but the director is of the opinion that a certification contained in the record of site condition filed in the registry does not accurately reflect the current state of the property, subsection (6) does not apply until a new record of site condition is filed in accordance with section 168.4.”

**The Vice-Chair:** Any discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.16(1) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the municipality or municipal representative shall give notice” and substituting “the municipality shall give notice.”

**The Vice-Chair:** Discussion? I shall now put the vote. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.16(2) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the municipality or municipal representative shall give notice” and substituting “the municipality shall give notice.”

**The Vice-Chair:** Discussion? All those in favour? Opposed? I declare the amendment carried.

1650

**Mr Kells:** I move that paragraph 2 of subsection 168.18(2) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “or” at the end of subparagraph ii, by adding “or” at the end of subparagraph iii and by adding the following subparagraph:

“iv. pay taxes due or collect rents owing with respect to the property.”

**The Vice-Chair:** Any discussion? I shall now put the vote. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.19(1) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “during the period described in subsection (2)” and substituting “in respect of the period described in subsection (3).”

**The Vice-Chair:** Any discussion? I shall put the vote. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.19(3) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the second anniversary” and substituting “the fifth anniversary.”

**The Vice-Chair:** Any discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.21(3) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be struck out and the following substituted:

“Restriction if record of site condition

“(2.1) If a record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property, no order shall be issued under

subsection (1) or (2) unless the director has reasonable grounds to believe that, as a result of the presence of a contaminant that was on, in or under the property as of the certification date, there is danger to the health or safety of any person.

“Scope of order

“(3) An order under subsection (1) or (2) may only require the secured creditor, receiver or trustee in bankruptcy, within such times as are specified in the order, to comply with such directions specified in the order as are reasonably necessary to ensure that,

“(a) none of the circumstances listed in subsection (1) exist, if no record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property; or

“(b) there is no danger to the health or safety of any person, if a record of site condition has been filed in the environmental site registry under section 168.4 with respect to the property.”

**The Vice-Chair:** Any discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that section 168.21 of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by adding the following subsections:

“When notice of order filed in registry

“(8) The director shall file notice of an order under subsection (1) or (2) in the environmental site registry in accordance with the regulations if a record of site condition has been filed in the registry under section 168.4 with respect to the property.

“Notice of compliance with order

“(9) If notice of an order has been filed in the registry under subsection (8) and the director is satisfied that the order has been complied with, the director shall file notice of the compliance in the registry in accordance with the regulations.

“Filing of new record of site condition

“(10) If notice of an order has been filed in the registry under subsection (8) and the director is satisfied that the order has been complied with but the director is of the opinion that a certification contained in the record of site condition filed in the registry does not accurately reflect the current state of the property, subsection (9) does not apply until a new record of site condition is filed in accordance with section 168.4.”

**The Vice-Chair:** Further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.22(1) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the secured creditor or secured creditor representative shall give notice” and substituting “the secured creditor shall give notice.”

**The Vice-Chair:** Discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.22(2) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the secured creditor or secured creditor representative shall give notice” and substituting “the secured creditor shall give notice.”

**Mr Levac:** It just tweaked me when I finally realized what we’re doing here. I kind of saw it all along, but I needed to ask this question. In previous amendments, you’re taking out “or the municipal representative” as well. Can you just give us a rationale why we’re removing the representatives of these people from this legislation?

**The Vice-Chair:** Who would like to respond to that?

**Mr Fox:** One of the policy intentions was to replicate in the bill to a very large extent the agreements that the MOE currently enters into with both municipalities, in relation to contaminated land, and secured creditors. On review, after first reading, we realized that the current notice obligations extend only to the principal, like the municipality, not the representative. Secondly, there was a concern about representatives in some areas, particularly lawyers, who have confidentiality obligations, seeing them compromised.

The result is that the municipality or the secured creditor or the fiduciary is responsible for giving notice, if this representative does find something out, but the actual notice obligation would rest only on the principal. It might be the municipality and not its representative in one case, or the lender, and so on. Those are the two rationales.

**The Vice-Chair:** Any further discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 168.22(3) of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “he, she or it shall give notice” and substituting “the receiver or trustee in bankruptcy shall give notice.”

**The Vice-Chair:** Discussion?

**Mr Marchese:** Are we making it clear that “he, she or it” is not a receiver or trustee?

**Mr Fox:** It’s the same explanation as before. What’s key is that the representative is not subject to the regulation, only the fiduciary himself, herself or itself. It relates to the issue to which I responded in relation to Mr Levac’s question.

**Mr Marchese:** No problem. Thank you.

**The Vice-Chair:** Any further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that section 168.25 of the Environmental Protection Act, as set out in subsection 2(38) of the bill, be amended by striking out “the fiduciary or fiduciary representative shall give notice” and substituting “the fiduciary shall give notice.”

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 2(41) of the bill be struck out.

**The Vice-Chair:** Discussion?

**Mr Colle:** Why is it being struck out?

**The Vice-Chair:** Who would like to respond?

**Mr Fox:** The paragraph that's being struck out is an amendment that deals with fees. The fees power is done by regulation. There is now a new provision enacted by the red tape bill that allows the Minister of the Environment to establish and require the payment of fees without regulation. Indeed, the current provisions that are in the act would at some time in the future be repealed as a result of the red tape amendment. So because the minister has the power now to establish and make fees without regulation, this is unnecessary and redundant.

**Mr Colle:** So basically the red tape bills precede this bill?

**Mr Fox:** I'm not sure of the sequence of introduction, but the amendments that were made to the EPA have been passed. The provision that gives the minister the power is now in force. It's section 179.1, I believe.

**Mr Colle:** So therefore the Minister of the Environment can set fees without regulation. That's what this says. It's compatible.

1700

**Mr Fox:** That is not what this says, but there's a general amendment that allows the minister to establish and set fees, and for this reason we don't need to provide for fees in this bill in relation to the new matters that—

**Mr Colle:** It's redundant, really.

**Mr Fox:** Yes, it is redundant, sir.

**The Vice-Chair:** Any further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Marchese:** Mr Chair, can I propose something in procedure?

**The Vice-Chair:** Go ahead.

**Mr Marchese:** Can we just go through every government motion without voting on it and wait and vote on all of these at the end, from page 39 on, rather than having to vote on each item? Except I understand that for the Liberal motions you will want to vote on them. I'm proposing that we read them on the record.

**The Vice-Chair:** Yes, they have to be read into the record.

**Interjection:** Save the voting.

**Mr Marchese:** Save the voting procedure until the very end on all of them. I'm sure procedurally it's OK, so as to save some time.

**The Vice-Chair:** The clerk's advice is we still need to have individual votes, so we might as well proceed as we've been going.

**Mr Marchese:** We still need what?

**The Vice-Chair:** We still need individual votes on the amendments.

**Mr Marchese:** We need them?

**The Vice-Chair:** Yes.

**Mr Marchese:** As opposed to voting on all of them at the end? It seems very odd, Mr Arnott.

**Mr Kells:** I was going to say that was a happy thought you had, though.

**The Vice-Chair:** So we will keep proceeding.

**Mr Kells:** I move that clause 176(10)(o) of the Environmental Protection Act, as set out in subsection 2(46) of the bill, be struck out.

**The Vice-Chair:** Any discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Shall section 2, as amended, carry? All those in favour? Any opposed? I declare section 2, as amended, carried.

**Mr Kells:** I move that subclause (b)(i) of the definition of "development period" in subsection 442.7(1) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by striking out "the cost of rehabilitating the property" and substituting "the cost of any action taken to reduce the concentration of contaminants on, in or under the property."

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the section carried.

**Mr Kells:** I move that clause (b) of the definition of "eligible property" in subsection 442.7(1) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by striking out "paragraph 4 of subsection 168.4(1) of the Environmental Protection Act" and substituting "subparagraph 4 i of subsection 168.4(1) of the Environmental Protection Act."

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subclause (c)(i) of the definition of "rehabilitation period" in subsection 442.7(1) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by striking out "the cost of rehabilitating the property" and substituting "the cost of any action taken to reduce the concentration of contaminants on, in or under the property."

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Levac:** I move that subsection 442.7(3) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by,

(a) adding "Subject to subsection (6)" at the beginning; and

(b) striking out "the taxes levied on eligible property for municipal purposes" and substituting "the taxes levied on eligible property for municipal and school purposes."

**The Vice-Chair:** Discussion? Do you want to explain that?

**Mr Levac:** I could probably guess that there's a better explanation coming shortly because—

**Mr Kells:** No. All you're going to get from me is that we agree.

**Mr Levac:** The rationale is probably provided by the government side because they're going to agree. They've submitted another—

*Interjection.*

**Mr Levac:** Wait a minute. They're going to agree, but maybe under their wording.

**Mr Marchese:** I have a question. Does this mean that the municipality would make the decision for the school board with respect to issues of tax levies? Does that take the responsibility or the power away from the school boards to do that? If so, that would be a problem.

**Mr Levac:** That's not the purpose. The purpose is to have the government side of their collection of the property tax, of the school tax portion—to use some of their portion. I'm probably going to be told that we can't do it but they can.

**The Vice-Chair:** Further discussion? Do you wish to add anything?

**Mr Marchese:** Let's hear it, Morley.

**Mr Kells:** We are on his side, so we'll get this one.

**Mr Ted Arnott (Waterloo-Wellington):** I'd just like a ruling from you if this amendment is in order or not, given the fact that it's coming from the opposition.

**Mr Kells:** It had better be in order.

**The Vice-Chair:** Yes. This amendment does not impose a tax so it can be proposed by the opposition side. The opposition party is able to move this and it is in order.

**Mr Arnott:** Thank you.

**The Vice-Chair:** Further discussion? All those in favour? Opposed? I declare the amendment carried.

**Mr Marchese:** Dave, that's big.

**Mr Levac:** I move that subsection 442.7(5) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by striking out "a bylaw under subsection (2)" in the portion before paragraph 1 and substituting "a bylaw under subsection (2) or (3)." I think that's housecleaning more than anything.

**Ms Mushinski:** That's 45?

**The Vice-Chair:** That's page 45.

**Mr Kells:** Page 44 was the same as theirs.

**The Vice-Chair:** Page 44 was the same and it was not moved. Any discussion on this amendment?

**Mr Kells:** They win again.

**The Vice-Chair:** I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Levac:** I move that subsection 442.7(6) of the Municipal Act, as set out in subsection 3(2) of the bill, be amended by striking out "A bylaw made under subsection (2)" and substituting "A bylaw made under subsection (2) or (3)."

**The Vice-Chair:** Discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

1710

**Mr Levac:** I move that subsection 442.7(17) of the Municipal Act, as set out in subsection 3(2) of the bill, be struck out and the following substituted:

"Sharing costs, if bylaw under subs. (3)

"(17) If a bylaw is passed under subsection (3) by the council of a single-tier municipality, the amount of the tax assistance shall be shared by the municipality and the school boards that share in the revenues from the taxes on the property affected by the bylaw in the same proportion that tax assistance is provided under the bylaw.

"Same

"(17.1) If a bylaw is passed under subsection (3) by the council of a lower-tier municipality and the bylaw applies to the upper-tier municipality, the amount of the tax assistance shall be shared by the municipalities and the school boards that share in the revenue from the taxes on the property affected by the bylaw in the same proportion that tax assistance is provided under the bylaw.

"Same

"(17.2) If a bylaw is passed under subsection (3) by the council of a lower-tier municipality and the bylaw does not apply to the upper-tier municipality, the amount of the tax assistance shall be shared by the lower-tier municipality and the school boards that share in the revenue from the taxes on the property affected by the bylaw in the same proportion that the tax assistance is provided under the bylaw, but the taxes for upper-tier purposes shall not be affected.

"Same

"(17.3) Despite subsections (17), (17.1) and (17.2), if a bylaw made under subsection (3) does not apply to taxes for school purposes, the amount of the tax assistance does not affect the amount of taxes for school purposes to be paid to the school boards."

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Levac:** I move that subsection 442.7(22) of the Municipal Act, as set out in subsection 3(2) of the bill, be struck out and the following substituted:

"Same

"(22) Subsections (4), (5), (6) and (7) apply, with necessary modifications, to the amendment of a bylaw passed under subsection (2) or (3), and subsections (4) and (7) apply, with necessary modifications, to the repeal of a bylaw passed under subsection (2) or (3)."

**The Vice-Chair:** Discussion?

**Mr Marchese:** The government likes it too, so OK.

**The Vice-Chair:** I shall now put the question. All those in favour? Those opposed? I declare the amendment carried.

**Mr Levac:** I move that subsection 17.1(1) of the Municipal Tax Sales Act, as set out in subsection 4(4) of the bill, be struck out and the following substituted:

"Power of entry"—

**The Vice-Chair:** Excuse me. Sorry.

**Mr Levac:** Did we miss one?

**The Vice-Chair:** Excuse me for just a second.

**Mr Levac:** The government motion: is it different?

**Mr Kells:** We just dropped 52.

**Mr Levac:** Right. That's what I thought.

**The Vice-Chair:** That's still section 3.

**Mr Levac:** We're moving to section 4? So you have to—

**The Vice-Chair:** Sorry. You're doing page 52 right now, correct?

**Mr Levac:** Page 53. Which means we have to vote on section 3?

**The Vice-Chair:** That's right. We have to move—

**Mr Levac:** My apologies, Mr Chairman.

**The Vice-Chair:** Should section 3, as amended, carry? Any opposed? I declare section 3 carried.

**Mr Levac:** On section 3, Mr Chairman, I did have a note to make a comment. I understand after my discussion with the clerk and a few other people—this particular comment is based on whether the government acted on some of the recommendations that some of the committees and deputants made. That is the creation of a fund to allow municipalities to draw from, as in some of the states. Those deputations made reference to a lot of the American states where they have a fund that's drawn from in a partnership with government agency, ministry and/or private sector and municipalities. I don't know if there's comment to be made on it. I would offer it to the government side if they did contemplate that, or whether or not that was received as information versus an amendment to the bill in terms of its spending.

**The Vice-Chair:** Mr Kells, do you want to comment on that?

**Mr Kells:** I'd have to bow.

**The Vice-Chair:** Would you like to comment? Could you state your name, please?

**Ms Katherine Beattie:** My name is Katherine Beattie, Ministry of Finance. We offered these amendments in response to requests from stakeholders. We did not contemplate the development of a fund at this time. We considered that the number and size and state of contamination of brownfields in the province is currently unknown. It was therefore impossible to develop a fund that would be meaningful at this time.

**Mr Levac:** In that discussion from the next step that would take place—and thank you for your indulgence, Mr Chairman—I understand that there's now going to be documentation of the brownfields in the province of Ontario. Subsequent to that, would there be any discussion given to reintroducing that particular idea?

**Ms Beattie:** I'm afraid I'm not in a position to answer that question.

**Mr Levac:** Whether or not the discussions took place within the Ministry of Finance, I guess.

**Mr Kells:** You could put it in a suggestion box, but I'm not sure what would happen.

**Mr Levac:** Thank you, Mr Kells.

**Mr Marchese:** Just a question. Your name again?

**Ms Beattie:** It's Katherine Beattie.

**Mr Marchese:** You said, "We don't know the number of sites, therefore we can't really establish a fund." If we had knowledge of how many sites there would be, then it would be easier to establish a fund? Is that the case? Is that what you're saying?

**Ms Beattie:** I think it's really important that we understand the financial risk to the province. Yes, it would be easier, at the staff level, to provide information to decision-makers about the kind of fund that would be required. Staff were unable to do that.

**Mr Marchese:** In the US, do they have knowledge of all the contaminated sites that they have?

**Mr Levac:** I'll give you examples if I may, Mr Chairman, through this discussion. Of the examples that I'm aware of, you'll have some that do and some that don't. One of the states I looked at did have a brownfield registry throughout municipalities that required them to give the state the information so that subsequently this fund could be funded appropriately. In other states, there is no registry and there is no actual legacy of how many brownfields there are.

With that information, I'm saying that the discussion has taken place at the ministry level, from what I'm hearing, and that at this time the ministry has decided not to create this fund that was referred to by many of the committee members. Or am I hearing that it did not get to that level—

**Ms Beattie:** I wasn't present at any of those discussions.

**Mr Levac:** What I'm saying is that during the deputations, several of the people who came to make presentations to the government talked about the creation of a fund. What I'm trying to discern is whether it went any further—anyone on the government side, on the ministry staff, at any ministry—than just simply the people sitting at the table and saying we should create a fund. If anyone can help clarify that, I would appreciate it.

**Mr Kells:** I'm not at liberty to reveal all of the deliberations behind closed doors. Very seriously, I don't know the answer. I suspect that if the stakeholders gave evidence and expressed their concerns, it would be taken in for consideration. Obviously at this time it hasn't impacted enough on us to be in the bill, but I appreciate your opinion as you expressed it.

**The Vice-Chair:** Mr Levac, did you wish to move an amendment on section 4?

**Mr Levac:** Yes. Thank you for your indulgence, Mr Chairman. I appreciate that.

I move that subsection 17.1(1) of the Municipal Tax Sales Act, as set out in subsection 4(4) of the bill, be struck out and the following substituted:

"Power of entry

"(1) For the purpose of assisting in determining whether it is desirable to acquire land that is offered for public sale under subsection 9(2), an inspector may, after the end of the one-year period mentioned in subsection 9(1), enter on and inspect the land."

I do have rationale for that if it's required.

**The Vice-Chair:** Discussion?

**Mr Marchese:** I'd like to hear the objections of the government, if they have any.

1720

**Mr Kells:** I'd be happy to. I just happen to have them here. The above substitution seeks to extend the one-year

environmental investigation period indefinitely. There's no logical reason as known as to why municipalities cannot exercise their power to enter on to land within the one year after the failed tax sale, and given the unlimited nature of the power of entry for inspection purposes, municipalities may find that they will be expected by the public to inspect all lands that are subject to a failed tax sale. I hope that's—

**Mr Levac:** I can understand that. The logic for offering that is because subsequent to some of the tax sale of lands, there are people who have been literally squatting and walking in and starting to put other things on to that property that may require them to have that change during that time. The idea is to give the municipality the authority and the ability to inspect that property at will, because there could be subsequently other materials brought on to that property even before you ask the Ministry of the Environment to come in and take a look at it. The rationale, as well as I appreciate what's being said on a very linear way, doesn't give the municipalities what they were looking for in the presentation: that if they're going to buy this piece of property for sale, they want to make sure that what they're going to be offering is subsequently flippable.

**Mr Marchese:** Do the ministry staff have anything different to add?

**Mr Mario Faieta:** Not really.

**The Vice-Chair:** Would you please state your name for the record.

**Mr Faieta:** It's Mario Faieta from the Ministry of Municipal Affairs and Housing. The one-year period and this power of entry were chosen specifically for the purposes of enabling a municipality to make an informed decision with respect to whether it wishes to acquire a property. That's the purpose.

**The Vice-Chair:** I shall now put the question. All those in favour? Opposed? I declare the amendment lost.

Section 4 having been completed, I shall put the question. Shall section 4 carry? All those in favour? Opposed? I declare section 4 carried.

**Mr Kells:** I move that subsection 5(1) of the bill be amended by adding the following definitions to section 1 of the Ontario Water Resources Act:

“‘fiduciary’ means an executor, administrator, administrator with the will annexed, trustee, guardian of property or attorney for property, but does not include a trustee in bankruptcy or trustee in bankruptcy representative; (‘représentant fiduciaire’)

“‘fiduciary representative’ means, with respect to a fiduciary, an officer, director, employee or agent of the fiduciary, or a lawyer, consultant or other adviser of the fiduciary who is acting on behalf of the fiduciary; (‘représentant d’un représentant fiduciaire’)

“‘municipal representative’ means, with respect to a municipality, an officer, employee or agent of the municipality, or a lawyer, consultant or other adviser of the municipality who is acting on behalf of the municipality; (‘représentant municipal’)

“‘receiver representative’ means, with respect to a receiver, an officer, director, employee or agent of the receiver, or a lawyer, consultant or other adviser of the receiver who is acting on behalf of the receiver; (‘représentant d’un séquestre’)

“‘secured creditor representative’ means, with respect to a secured creditor, an officer, director, employee or agent of the secured creditor, or a lawyer, consultant or other adviser of the secured creditor who is acting on behalf of the secured creditor; (‘représentant d’un créancier garanti’)

“‘trustee in bankruptcy representative’ means, with respect to a trustee in bankruptcy, an officer, director, employee or agent of the trustee in bankruptcy, or a lawyer, consultant or other adviser of the trustee in bankruptcy who is acting on behalf of the trustee in bankruptcy. (‘représentant d’un syndic de faillite’)

I swear I read that before once.

**Mr Levac:** Not to try to pick hairs here, but this definition seems to counter the one that we were taking things out of in the previous bill. I don't know why we need to put those in. So if you can help me with that, I would appreciate it.

**Mr Flagal:** Those definitions you see there are going to go at the beginning of the act. The reason for that is, when you're giving protection from orders, which is not the notice provisions that we were dealing with before where we took out “representative,” we give protection from orders not only to, let's say, the municipality but to a municipal representative. When we are saying in prescribed circumstances, which is going to be addressed in the regulations, there has to be notice given to the ministry if the municipality learns of something, then that's only placed on the municipality, but you still need the definition of “municipal representative” there, because when you're giving protection from orders, you're giving it not only to the municipality but to the municipal representative. That's why you need both “representative” and “municipality” in there; “fiduciary” and “fiduciary representative.” They are two very different provisions.

**Mr Levac:** I just wanted to save Mr Kells all that reading.

**The Vice-Chair:** Further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that section 5 of the bill be amended by adding the following subsection:

“(1.1) Section 1 of the act, as amended by the Statutes of Ontario, 1992, chapter 23, section 39, 1993, chapter 23, section 73, 1998, chapter 35, section 44, 2000, chapter 22, section 2, 2000, chapter 26, schedule E, section 5, 2000, chapter 26, schedule F, section 13 and 2001, chapter 9, schedule G, section 6, is further amended by adding the following subsection:

“Health or safety

“(2) For the purposes of this act, a danger to existing water supplies that are used for human consumption shall be deemed to be a danger to the health or safety of persons.”

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that clause 13(5)(a) of the Ontario Water Resources Act, as set out in subsection 5(2) of the bill, be amended by striking out “within 10 days of taking or being appointed to take possession or control of the property,” and substituting “within 10 days after taking or being appointed to take possession or control of the property, or within 10 days after the issuance of the order.”

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 82.1(1) of the Ontario Water Resources Act, as set out in subsection 5(4) of the bill, be struck out and the following substituted:

“Ss. 89.1 to 89.14: Director may cause things to be done

“(1) If, but for sections 89.1 to 89.14, the director or a provincial officer would be authorized by this act to make a direction or order requiring a person to do a thing, the director may cause the thing to be done.”

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 84 (2.2) of the Ontario Water Resources Act, as set out in subsection 5(7) of the bill, be amended by striking out “the gross negligence or wilful misconduct of the receiver or trustee in bankruptcy” and substituting “the gross negligence or wilful misconduct of the receiver or trustee in bankruptcy or of a receiver representative or trustee in bankruptcy representative.”

**The Vice-Chair:** Discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 89.2(1) of the Ontario Water Resources Act, as set out in subsection 5(11) of the bill, be amended by striking out “in respect of material that was discharged into the natural environment before the certification date and that is on, in or under the property” and substituting “in respect of material that was discharged into the natural environment before the certification date and was on, in or under the property as of the certification date.”

**The Vice-Chair:** Discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 89.2(3) of the Ontario Water Resources Act, as set out in subsection 5(11) of the bill, be struck out.

**The Vice-Chair:** Discussion? I shall now put the question. Those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 89.2(4) of the Ontario Water Resources Act, as set out in subsection

5(11) of the bill, be struck out and the following substituted:

“Material that moves to other property

“(4) Subsection (1) does not apply if, after the certification date, any of the material moved from the property to which the record of site condition relates to another property.”

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

1730

**Mr Kells:** I move that section 89.3 of the Ontario Water Resources Act, as set out in subsection 5(11) of the bill be amended by,

(a) striking out “as a result of the presence of material that was on, in or under the property before the certification date, there is danger to the health or safety of any person, including danger to any existing water supplies” in subsection (1) and substituting “as a result of the presence of material that was on, in or under the property as of the certification date, there is danger to the health or safety of any person”; and

(b) striking out “including danger to any existing water supplies” in subsection (2).

**Mr Levac:** I’ve noticed this quite a few times and I just want to make sure I have a clarification. When we strike out (b), “including danger to any existing water supplies” in subsection (2), are we then protecting the water supply by doing so?

**The Vice-Chair:** Who would like to respond?

**Mr Fox:** This related to the interpretation provision that was dealt with by the motion that you see on page 56. By virtue of that motion, if there’s a danger to existing water supplies that are to be used by human consumption, that means in law it’s going to be a danger to the health and safety of persons. Once we have an interpretation provision earlier in the act, in the new subsection (2), the words are unnecessary in the subsection to which we’re referring because of this interpretation provision.

**Mr Levac:** Very good. I just wanted to make sure the people understood that we weren’t eliminating protecting our water, we were actually encouraging the protection of our water.

**The Vice-Chair:** Any further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that section 89.4 of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out the definitions of “fiduciary,” “fiduciary representative,” “municipal representative,” “receiver representative,” “secured creditor representative,” and “trustee in bankruptcy representative” and by adding the following definitions:

“‘certification’ date has the same meaning as in the Environmental Protection Act; (‘date d’attestation’)

“‘Registry’ means the Environmental Site Registry established under Part XV.1 of the Environmental Protection Act. (‘Registre’).”

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 89.7(1) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out "during the period described in subsection (3)" and substituting "in respect of the period described in subsection (3)."

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Levac:** I move that subsections 89.7(3) and (4) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be struck out and the following substituted:

"Time period

"(3) Subsection (1) only applies to the municipality or municipal representative in respect of the period that begins on the day the municipality became the owner of the property by virtue of the registration of the notice of vesting and ends on the fifth anniversary of that day.

"Extension of period

"(4) On application by the municipality, the director shall extend the period referred to in subsection (3), before or after it expires and on such terms or conditions as the director considers appropriate if,

"(a) the municipality intends to remediate the property and, having regard to the cost and any other factors, the municipality requires additional time to prepare for or perform the remediation;

"(b) the municipality is not using the property for a municipal purpose and is actively attempting to sell the property; or

"(c) the director considers an extension appropriate for any other reason."

**Mr Marchese:** Explanation?

**Mr Levac:** In terms of needing the explanation, same one.

**The Vice-Chair:** Any further discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment lost.

**Mr Kells:** I move that subsection 89.7(3) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out "the second anniversary" and substituting "the fifth anniversary."

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 89.8(2) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be struck out and the following substituted:

"Restriction if record of site condition

"(1.1) If a record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property, no order shall be issued under subsection (1) unless the director has reasonable grounds to believe that, as a result of the presence of material that was on, in or under the property

as of the certification date, there is danger to the health or safety of any person.

"Scope of order

"(2) An order under subsection (1) may only require the municipality, within such times as are specified in the order, to comply with such directions specified in the order as are reasonably necessary to ensure that,

"(a) none of the circumstances listed in subsection (1) exist, if no record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property; or

"(b) there is no danger to the health or safety of any person, if a record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property."

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Levac:** I move that section 89.8 of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by adding the following subsections:

"Exception

"(5) A municipality is not required to comply with an order under subsection (1) if,

"(a) the order did not arise from the gross negligence or wilful misconduct of the municipality or of a municipal representative; or

"(b) not later than 10 days after being served with the order, or within such longer period as may be specified by the director in the order, the municipality notifies the director that it has abandoned, disposed of or otherwise released its interest in the property to which the order relates.

"Notice under subs. (5)

"(6) Notice under clause (5)(b) must be given in the manner prescribed by the regulations referred to in subsection 168.15(6) of the Environmental Protection Act.

"Extent of obligation

"(7) The obligation of a municipality to incur costs to comply with an order under subsection (1) is limited to the value of the property to which the order relates on the date the municipality is served with the order, less the municipality's reasonable costs of holding or administering the property, unless the order arose from the gross negligence or wilful misconduct of the municipality or a municipal representative."

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? All those opposed? I declare the amendment lost.

**Mr Kells:** I move that section 89.8 of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by adding the following subsections:

"When notice of order filed in registry

"(5) The director shall file notice of an order under subsection (1) in the registry in accordance with the regulations referred to in subsection 168.8(5) of the Environmental Protection Act if a record of site condition

has been filed in the registry under section 168.4 of that act with respect to the property.

“Notice of compliance with order

“(6) If notice of an order has been filed in the registry under subsection (5) and the director is satisfied that the order has been complied with, the director shall file notice of the compliance in the registry in accordance with the regulations referred to in subsection 168.8(6) of the Environmental Protection Act.

“Filing of new record of site condition

“(7) If notice of an order has been filed in the registry under subsection (5) and the director is satisfied that the order has been complied with but the director is of the opinion that a certification contained in the record of site condition filed in the registry does not accurately reflect the current state of the property, subsection (6) does not apply until a new record of site condition is filed in accordance with section 168.4 of the Environmental Protection Act.”

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that paragraph 2 of subsection 89.9(2) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out “or” at the end of subparagraph ii, by adding “or” at the end of subparagraph iii and by adding the following subparagraph:

“iv. pay taxes due or collect rents owing with respect to the property.”

1740

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 89.10(1) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out “during the period described in subsection (3)” and substituting “in respect of the period described in subsection (3).”

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 89.10(3) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by striking out “the second anniversary” and substituting “the fifth anniversary.” Happy birthday.

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that subsection 89.12(3) of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be struck out and the following substituted:

“Restriction if record of site condition

“(2.1) If a record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property, no order shall be issued under subsection (1) or (2) unless the director

has reasonable grounds to believe that, as a result of the presence of material that was on, in or under the property as of the certification date, there is danger to the health or safety of any person.

“Scope of order

“(3) An order under subsection (1) or (2) may only require the secured creditor, receiver or trustee in bankruptcy, within such times as are specified in the order, to comply with such directions specified in the order as are reasonably necessary to ensure that,

“(a) none of the circumstances listed in subsection (1) exist, if no record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property; or

“(b) there is no danger to the health or safety of any person, if a record of site condition has been filed in the registry under section 168.4 of the Environmental Protection Act with respect to the property.”

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that section 89.12 of the Ontario Water Resources Act, as set out in subsection 5(12) of the bill, be amended by adding the following subsections:

“When notice of order filed in registry

“(8) The director shall file notice of an order under subsection (1) or (2) in the registry in accordance with the regulations referred to in subsection 168.8(5) of the Environmental Protection Act if a record of site condition has been filed in the registry under section 168.4 of that act with respect to the property.

“Notice of compliance with order

“(9) If notice of an order has been filed in the registry under subsection (8) and the director is satisfied that the order has been complied with, the director shall file notice of the compliance in the registry in accordance with the regulations referred to in subsection 168.8(6) of the Environmental Protection Act.

“Filing of new record of site condition

“(10) If notice of an order has been filed in the registry under subsection (8) and the director is satisfied that the order has been complied with but the director is of the opinion that a certification contained in the record of site condition filed in the registry does not accurately reflect the current state of the property, subsection (9) does not apply until a new record of site condition is filed in accordance with section 168.4 of the Environmental Protection Act.”

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Shall section 5, as amended, carry? I declare section 5, as amended, carried.

**Mr Kells:** I move that section 6 of the bill be amended by adding the following subsection:

“(1.1) Section 1 of the act, as amended by the Statutes of Ontario, 1993, chapter 27, schedule, 1998, chapter 35, section 77 and 2000, chapter 26, schedule F, section 14, is further amended by adding the following subsection:

"Health or safety

"(3) For the purposes of this act, a danger to existing water supplies that are used for human consumption shall be deemed to be a danger to the health or safety of persons."

**The Vice-Chair:** Discussion? No? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that clause 31(5)(a) of the Pesticides Act, as set out in subsection 6(2) of the bill, be amended by striking out "within 10 days of taking or being appointed to take possession or control of the property," and substituting "within 10 days after taking or being appointed to take possession or control of the property, or within 10 days after the issuance of the order."

**The Vice-Chair:** Discussion? I shall put the question. All those in favour? Opposed? I declare the amendment carried.

**Mr Kells:** I move that paragraph 2 of subsection 31.4(2) of the Pesticides Act, as set out in subsection 6(2) of the bill, be amended by striking out "or" at the end of subparagraph ii, by adding "or" at the end of subparagraph iii and by adding the following subparagraph:

"iv. pay taxes due or collect rents owing with respect to the property."

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Shall section 6, as amended, carry? I declare section 6, as amended, carried.

**Mr Levac:** I move that the definition of "community improvement project area" in subsection 28(1) of the Planning Act, as set out in subsection 7(2) of the bill, be amended by striking out "or for any other environmental, social or community economic development reason" at the end and substituting "or for any other reason."

The proposed amendment to the Planning Act regarding community improvement plans is appreciated by the municipality of Brant, and Brantford. However, the definition of the community improvement project area should retain the wording "or for any other reason" in conjunction with the new wording of Bill 56. It should be kept in mind that community improvement area plans can be, and are, used by municipalities for a wide variety of purposes including downtown renewal, neighbourhood revitalization, in addition to brownfield revitalization and redevelopment. This flexibility should be maintained and therefore we suggest respectfully that it should be for any other reason.

**The Vice-Chair:** Discussion?

**Mr Marchese:** I'm going to support Dave.

**The Vice-Chair:** I shall now put the question. All those in favour? Opposed? I declare the amendment lost.

**Mr Kells:** If I may, Mr Chair, the government position is that they've asked for examples of what could not be covered by the broader and meaningful phrase "or for any other environmental, social or community economic development reason" and they, the government, hasn't

received anything that says that the current wording can't do what we want it to do. I appreciate where you're coming from.

**Mr Levac:** In their submission, Brantford submitted that. Were they asked or did they come back? I don't know that, in fact. If they did come back with it, I'd like to know if that was—

**Mr Kells:** I can't enlighten you, but possibly staff could be helpful.

**Mr Levac:** Was there any response back?

**Ms Thelma Gee:** Actually, we didn't ask Brantford. I did, in passing, talk to the city of Hamilton and asked if, in the new phrase that we were proposing—"environmental, social or community economic development"—in conjunction with the existing wording in the Planning Act, what type of project could not be captured by this wording, because the new phrase was intended to expand the reasons for which community economic activities could take place. We wanted to give meaning to the phrase "or for any other reason." That's where the current wording comes in.

**Mr Levac:** I appreciate that. I'll take that back to my community and have that explained.

**Mr Marchese:** They had another comment to make. We might as well hear it.

**Mr Faieta:** Just so you understand, that phraseology was taken from a court decision not so long ago. The city of Toronto's community improvement plan was challenged on the basis that those types of reasons—environmental, social, whatever—weren't encompassed within the phraseology "or for any other reason." This wording here makes it clear that a community improvement plan can do those types of things.

**Mr Levac:** It includes those.

**Mr Faieta:** Yes. It's really trying to be expansive rather than restrictive, and to provide clarity.

**Mr Kells:** I move that subsections 7(4) and (5) of the bill be struck out and the following substituted:

"(4) Subsection 28(4) of the act, as re-enacted by the Statutes of Ontario, 1994, chapter 23, section 20 and amended by 1996, chapter 4, section 18, is repealed and the following substituted:

"Community improvement plan

"(4) When a bylaw has been passed under subsection (2), the council may provide for the preparation of a plan suitable for adoption as a community improvement plan for the community improvement project area and the plan may be adopted and come into effect in accordance with subsections (4.1) to (4.4).

"Same

"(4.1) If a community improvement plan includes provisions that authorize the exercise of any power or authority under subsections (6) or (7), or under section 442.7 of the Municipal Act, that would be prohibited under subsection 111(1) of the Municipal Act, subsections 17(15) to (22) and (31) to (50) apply, with necessary modifications, in respect of the community improvement plan and any amendments to it.

"Same

"(4.2) If a community improvement plan does not include provisions that authorize the exercise of any power or authority under subsection (6) or (7), or under section 442.7 of the Municipal Act, that would be prohibited under subsection 111(1) of the Municipal Act, subsections 17(15) to (30), (44) to (47) and (49) and (50) apply, with necessary modifications, in respect of the community improvement plan and any amendments to it.

"Same

"(4.3) The minister shall be deemed to be the approval authority for the purpose of subsections (4.1) and (4.2).

"Same

"(4.4) Despite subsections (4.1) and (4.2), if an official plan contains provisions describing the alternative measures mentioned in subsection 17(18), subsections 17(15), (16) and (17) do not apply in respect of the community improvement plan and any amendments to it, if the measures are complied with."

**The Vice-Chair:** Discussion? I shall now put the question. All those in favour? Opposed? I declare the amendment carried.

Shall section 7, as amended, carry? Carried.

Shall section 8 carry? Carried.

Shall section 9 carry? Carried.

Shall the title of the bill carry? Carried.

**Mr Levac:** I will be very brief and I'll make this point on behalf of my municipality. The city of Brantford urges the province to develop a policy whereby it will remove provincial liens on properties acquired by municipalities as the result of tax sales and where a municipality has a remediation strategy in place. It is not being addressed. The city of Brantford wants me to put that forward. The removal of provincial liens has not taken place as originally indicated in committee presentation. Quite frankly, it is not good enough that the municipalities get stuck with those liens holding in place. We do encourage the province to come up with some type of mechanism to do that.

**The Vice-Chair:** Thank you for that point, Mr Levac.

Shall Bill 56, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

With that, it being five to 6 and a vote being called, I declare this meeting adjourned.

*The committee adjourned at 1754.*





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### STANDING COMMITTEE ON GENERAL GOVERNMENT

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A2 ON  
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G-12

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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 29 October 2001

# Journals des débats (Hansard)

Lundi 29 octobre 2001

**Standing committee on  
general government**

**Comité permanent des  
affaires gouvernementales**

Subcommittee report

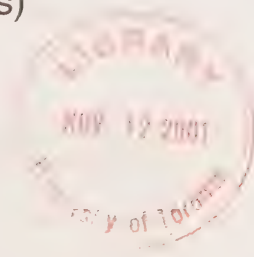
Rapport du sous-comité

Vital Statistics  
Statute Law Amendment Act  
(Security of Documents), 2001

Loi de 2001 modifiant des lois  
en ce qui concerne  
les statistiques de l'état civil  
(sécurité des documents)

Chair: Steve Gilchrist  
Clerk: Anne Stokes

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 29 October 2001

Lundi 29 octobre 2001

*The committee met at 1531 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Steve Gilchrist):** Good afternoon. I call the standing committee to order for the purpose of considering Bill 109, An Act to enhance the security of vital statistics documents and to provide for certain administrative changes to the vital statistics registration system.

The first order of business would be consideration of the report from the subcommittee on committee business. I believe every member has a copy. I'm looking for a volunteer to read it into the record.

**Mr Dave Levac (Brant):** Your subcommittee met on Monday, October 22, 2001, to consider the method of proceeding on Bill 109, An Act to enhance the security of vital statistics documents and to provide for certain administrative changes to the vital statistics registration system, and recommends the following:

(1) That, pursuant to the order of the House dated Wednesday, October 17, 2001, the committee schedule clause-by-clause consideration of Bill 109 on Monday, October 29, and Wednesday, October 31, 2001; and

(2) That the deadline for receipt of amendments be 5 pm on Friday, October 26, 2001.

So submitted.

**The Chair:** Mr Levac has moved adoption of the subcommittee report. Any further comment? Seeing none, I'll put the question. All those in favour of the subcommittee report? Opposed? It is adopted.

## VITAL STATISTICS

STATUTE LAW AMENDMENT ACT  
(SECURITY OF DOCUMENTS), 2001LOI DE 2001 MODIFIANT DES LOIS  
EN CE QUI CONCERNE  
LES STATISTIQUES DE L'ÉTAT CIVIL  
(SÉCURITÉ DES DOCUMENTS)

Consideration of Bill 109, An Act to enhance the security of vital statistics documents and to provide for certain administrative changes to the vital statistics registration system / Projet de loi 109, Loi visant à accroître la sécurité des documents de l'état civil et

prévoyant certaines modifications administratives au système d'enregistrement des statistiques de l'état civil.

**The Chair:** That then takes us to point 2 on your agenda, which is clause-by-clause consideration of Bill 109.

Are there any amendments, comments or discussion for sections 1 through 6 in the act? Seeing none, I'll put the question. All those in favour of sections 1 through 6? Opposed? Sections 1 through 6 are carried.

Section 7: any comments, amendments?

**Mr Joseph Spina (Brampton Centre):** I move that section 45.1 of the Vital Statistics Act, as set out in section 7 of the bill, be amended by adding the following subsection:

"No fee

"(2) No person shall charge a fee for acting as a guarantor."

**The Chair:** Do you wish to speak to the amendment?

**Mr Spina:** Basically, at this point there are some fees collected by municipalities for various administrative costs, but we don't feel that a guarantor—it leaves the door open, I suppose, to be bought off, for lack of a better way to describe it. We want a guarantor to be as honest and have as much integrity as possible, so therefore they would not be in a position to charge a fee.

**Mr Levac:** I would really like to commend the government for picking up on this amendment. As I spoke in the House to it, I expressed an interest in this particular amendment simply because of the fact that I was asked to be given money as a guarantor, refused it, and said we'd maybe better take a look at that because there would be people who could be charging money for that service. I thank the government for putting that amendment forward.

**The Chair:** Further debate? Seeing none, all those in favour of the amendment? Opposed? It is carried.

**Mr Spina:** I move that subsections 45.2(2) and (3) of the Vital Statistics Act, as set out in section 7 of the bill, be struck out and the following substituted:

"Other documents

"(2) The registrar general may limit the number of certificates and certified copies of registrations that may be issued in respect of any change of name, death, still-birth or marriage.

"Application for reconsideration

"(3) On the application of a person who has been refused a birth certificate or a certified copy of a birth

registration under sections 44 or 45 or who has been refused a birth certificate or a certified copy of a birth registration under this section, the registrar general shall consider the matter and he or she may grant or refuse the application.”

**The Chair:** Any comment?

**Mr Spina:** Sometimes there are some elements of the information requested that may not be 100% complete, but if there are sufficient relevant criteria to verify that it is the proper individual and it is justified, even though technically under the rules of the form they may not completely comply, there is enough discretion on the part of the registrar general to be able to still grant the issuance.

**The Chair:** Further debate?

**Mr Mike Colle (Eglinton-Lawrence):** If I could ask staff—is there staff here? Under this amendment, does a person who has been denied a birth certificate by the process or by the registrar general have the right to demand a review or a hearing to determine why he or she has been denied the birth certificate?

**Ms Diane Zimnica:** Diane Zimnica, with the Ministry of Consumer and Business Services.

There is a right of reconsideration under this proposed amendment for anyone who is refused a birth certificate or a certified copy of a birth registration under any one of three sections of the act. Birth certificates and certified copies of birth registrations are issued pursuant to section 44 of the act, section 45 of the act, and now under this new section where we limit the number of birth certificates. Anyone refused a copy of their own birth certificate would have the right to apply for reconsideration to the registrar general, who is the minister at this point in time. The registrar general would be compelled to look at the application and then make a decision. Then of course a further review would be to a judicial review.

**Mr Colle:** Therefore, the registrar general would have to review the reason. Upon request, there's an obligation on the registrar general to review it and, subject to that review, the registrar would determine whether or not the person has a legitimate request?

**Ms Zimnica:** That's correct.

**Mr Colle:** The registrar general cannot deny that right to review?

**Ms Zimnica:** No. Must review the request for reconsideration; must review the application or the request; obliged to review the application or the request—doesn't have to grant it, but must review it, must take a look at the reasons the person was denied the certificate or the certified copy.

**Mr Colle:** It would give them the right to have some reconsideration take place, just by making that request in writing or whatever it is that there's been some mistake.

**Ms Zimnica:** That's correct.

**Mr Colle:** The wording is a bit ambiguous: the registrar general “shall consider the matter and he or she....” OK, so the registrar “shall consider” it, so upon request. In other words, there's an obligation to consider it.

**Ms Zimnica:** That's correct.

**Ms Shelley Martel (Nickel Belt):** Under subsection (3), then, if you are refused the birth certificate, you will receive notification of the same, a letter stating that?

**Ms Zimnica:** That's correct.

**Ms Martel:** I understand that would be if you were applying for the first time?

**Ms Zimnica:** Applying for the first time or if you wanted a replacement certificate.

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**Ms Martel:** OK. Is there a circumstance under which the registrar general can revoke a birth certificate which is a process not triggered by an original application? Can you have a birth certificate and have it revoked and not receive notification of the same?

**Ms Zimnica:** You could have a birth certificate that would be cancelled. You would get a letter saying that your certificate has been—it is the number that's cancelled. The birth registration, which is the underlying document, cannot be cancelled without a hearing. That's provided for in section 52 of the act. So you can't lose your identity, the registrar general cannot strip you of your legal identity as an Ontarian, without giving you a formal SPPA hearing. The birth certificate, or a certified copy of the birth registration, is just that; it is a copy of the registration or the certificate is an extract from that original document. For that, yes, you could be cancelled. You'd get a letter saying, “Pursuant to your call that you'd said you lost or had your certificate stolen, we've cancelled that number.” It's like deactivating a credit card; that credit card is deactivated but it doesn't mean your right to get another copy is extinguished. You would reapply for a certificate, and if you were refused at that point you would trigger an automatic reconsideration—this very section we're talking about.

**Ms Martel:** I think what I'm thinking about is something a little bit different. Bear with me for a moment. Let's say, for example, the registrar general had some information about an individual which would lead him or her to believe the birth certificate originally was provided in error. What is the obligation of the registrar general at that point with respect to reviewing that information? And what notification, if any, is then provided to the individual who had that birth certificate when it is cancelled?

**Ms Zimnica:** Let me break your question down into two parts. First, if you were given a birth certificate in error, you weren't entitled to the certificate in the first place. It isn't yours. I'm trying to understand the circumstances in which you could've gotten one that you weren't entitled to get.

**Ms Martel:** Well, the government has phrased some of this around the events of September 11. One of the scenarios raised was the following: let's say, for example, you have a birth certificate from someone who is dead and that comes to the attention of the registrar general. I would assume there would be a cancellation of that.

**Ms Zimnica:** I would think there probably would be a cancellation of that.

**Ms Martel:** And what happens after that?

**Ms Zimnica:** Under the normal course of things, a letter would go out indicating that your certificate has been cancelled.

**Ms Martel:** And you have a right to appeal?

**Ms Zimnica:** If the certificate itself has been cancelled, you have the right to apply for a new one the same day. You could call up and say, "I'm entitled to the certificate. I would like one." We would say, "Fine. Here's your application form. Can you answer the entitlement questions?" If it was determined that you weren't entitled, you wouldn't get another one but you would have the right of reconsideration of that decision.

**Ms Martel:** Under the legislation as it stands, even with the changes, you can't appeal cancellation of a birth certificate. You have to apply for a new one.

**Ms Zimnica:** Right.

**Ms Martel:** Is there a reason we wouldn't apply the same process for a cancellation of the birth certificate? I use an extreme example, but what I'm concerned about is that the registrar gets information that may or may not be correct. They cancel the birth certificate. Why don't we have the same mechanism for appeal of that as we are providing here for an application for a new certificate? Do you understand what I'm getting at?

**Ms Zimnica:** Yes, I do. The registrar general firstly is going to be bound to a very high level of scrutiny. You're not going to cancel willy-nilly someone's birth certificate. You would have to be very satisfied and have it on very good information. The kind of information we are talking about would be clear, cogent, something in writing provided to us by law enforcement. That's what's being envisioned in this section.

Your certificate will be cancelled under one of two circumstances: it has been reported lost, stolen, destroyed, found; and the other circumstance is really going to be when the registrar general has reasonable grounds to believe there's a fraudulent or improper use, and we're only going to find that out if law enforcement tells us. At that point, the office of the registrar general or the registrar general would be liaising with the RCMP, with the FBI. That kind of decision wouldn't be undertaken, for example, upon a letter from a disgruntled spouse. Law enforcement would be involved right at the front end.

So providing a right of appeal in those circumstances—you may in fact have a document that someone's not entitled to out there until the hearing process is concluded. That surely thwarts the whole intention of the bill, which is to deactivate a certificate that is being fraudulently used, in the extreme circumstance, by a terrorist. Assume and then talk later. Law enforcement would be involved at that point.

**Mr Spina:** I'm not sure if this would help, Shelley, but the certificates, as they are being or will be issued henceforth, will have a numbered registration which will be kept, and when a cancellation is then issued for whatever reason, there's notice, and they have to appeal, apply and say, "Hey, this shouldn't have been cancelled"

for whatever reason. The reality is that they have to reissue a new one therefore, because the one that was cancelled will be documented as cancelled. That number is cancelled and they would have to reissue a new number to that individual. That's probably one of the main reasons, for the control to continue forward.

**Ms Martel:** I assumed that in most cases there's probably going to be a very good reason for that to occur, but in the circumstance that there isn't, I wanted to make sure someone does have a right to deal with that. If it is to apply for a new one, that's fine.

**Mr Colle:** I just have one more question. In terms of the denial of an application, some of the information may be difficult to ascertain: the hospital, the doctor, your mother's place of birth. That could happen; you know, you've got an adoption situation and then it changes over and so forth. What happens if you can't get—is that grounds for denying an application? Is there any way for the registrar or whoever to take that into consideration if it isn't complete? What's the mechanism there?

**Ms Zimnica:** The questions are weighted. You don't have to answer every single question. I'm not at liberty to disclose how they're weighted, but I can tell you that up until this point in time and into the future, the registrar general deals with those on a case-by-case basis and every effort is made to ascertain that someone is who they say they are. No one is trying to withhold a certificate from someone who's legitimately entitled to it. Of course, the right of review is triggered by this very amendment that the government is proposing. If you were denied because you couldn't answer the key questions to prove entitlement, you would be able to apply for a reconsideration, provide your written reasons to the minister, and the minister could take a look at it and then overrule that decision that was made to deny you a copy of the birth certificate.

**Mr Colle:** That's what I was concerned about, that there might be one bit of information missing and that person, because it would be incomplete, would be denied.

**Ms Zimnica:** No.

**Mr Spina:** I think what happens too, Mike, is that when the appeal is made it essentially also triggers the right of the registrar general to conduct the investigation. They may have that authority in any case, but it would certainly trigger and motivate them to do an investigation to determine that if there are mitigating circumstances preventing this person's issuance of the certificate, then let's go into them. Your example, most particularly with regard to adoptees—it would be able to get into the appropriate records, perhaps, to see if that verification is there.

**The Chair:** Any further debate on this amendment? Seeing none, I'll put the question. All those in favour of the amendment? Carried.

Shall section 7, as amended, carry? It is carried.

Section 8: any comments or amendments? Shall section 8 carry? Section 8 is carried.

Section 9.

**Mr Spina:** I move that section 51.2 of the Vital Statistics Act, as set out in section 9 of the English version of

the bill, be amended by inserting “do” after “to” in the last line.

**The Chair:** Any debate?

**Mr Spina:** It just makes the thing proper, that “it is appropriate to do so” so we have a very clear sentence there.

**The Chair:** In the absence of any further debate, I’ll put that question. All those in favour of the amendment? Opposed? It is carried.

1550

**Mr Colle:** I move that subsection 51.2 of the Vital Statistics Act, as set out in section 9 of the bill, be amended by adding the following subsections:

“Hearing

“(2) A person may apply to the registrar general for a hearing if,

“(a) the person has been refused a certificate or certified copy of a registration under section 44 or 45 or has been refused an additional certificate or certified copy of a registration under section 45.2; or

“(b) the person has had a certificate or a certified copy of a registration cancelled under this section.

“Same

“(3) The registrar general shall hold a hearing when he or she receives an application under subsection (2) and he or she shall decide whether a certificate or certified copy should be issued or replaced.”

Briefly, it’s our feeling that we are trying to ensure that in certain cases where there was a dispute and a refusal of application, at least the person making that application for review to the registrar general be given a hearing. I know the amendment put by the government talks about the review taking place more internally and perhaps the person never had a chance to appear before the registrar or his or her representative. We are trying to make it a little stronger in terms of at least guaranteeing that a person who has a cancellation or refusal take place has the right to a hearing with the registrar general or his designate. That was the motivation for the amendment.

**The Chair:** Further debate?

**Mr Spina:** One of the concerns we have with this is that in the event that you have an individual who is deliberately fraudulently using birth certificates and you end up with a public notice situation—the individual may be in the process of trying to cross the border improperly, and if you start giving them a heads-up like this, it gives them time to get away, if you will. That’s the reason we disagree with this motion.

**Mr Colle:** I don’t quite understand that.

**Mr Levac:** I just want to talk to Joe about the logic behind that. My understanding is that once the person has lost their certificate, there’s concern that this person still may be able to cross the border? He doesn’t have the certificate now, so being held at the border doesn’t prevent the person from having a hearing, right? The way you’ve described it is that if this person comes to the border with a cancelled certificate, which would be on the record, the officials would have the right to refuse entry because he’s got a cancelled certificate. We are

looking at a hearing after the cancellation of the certificate, which means the person couldn’t get across the border—

*Failure of sound system.*

**Mr Levac:** —so it’s one more step than what you’ve already amended. It has no effect whatsoever on the previous concern about getting across a border or anything, because they don’t have the certificate in the first place.

**Mr Spina:** It becomes an open hearing process and it just becomes bureaucratic. If you start getting into those kinds of hearings or situations, then you need a place to have that kind of hearing, you need to have staff around. Essentially, it becomes like a quasi-tribunal, I suppose, in other kinds of hearings we have. Frankly, in our opinion, it’s the view that the individual does have the right of appeal to the registrar general, with the appropriate reasons, and the registrar general therefore has the discretion. But to get into a situation where you’ve got to have the individuals personally speaking with the registrar general on a hearing basis, you’re getting into a whole lot of red tape.

**Mr Levac:** Our contention is that what you consider red tape is our view of what democracy is. That’s the difference between the two. You have the right to form the appeal and the registrar general hears the case, which we accepted. But the next step, we are saying, is a next level to ensure that the people who have those certificates removed have the opportunity to make sure they’re heard and that they have that opportunity. A price to pay is the right to have that person’s day in court. That’s basically what we are saying. The day in court is no longer with them. The day in court, right now, with the amendment we passed for you, is giving the registrar general that opportunity to ensure the appeal has taken place, but we’re asking that we allow the person to appear. That’s the only difference.

**Mr Spina:** If you are truly concerned about the right of the individual to have the document, then clearly going through that kind of process would drag the time frame out and certainly would not be in the interest of the applicant or the appellant. But there is always going to be a judicial option available in the long run if the registrar continues to refuse to grant it and that individual feels they have a legitimate case. There is always the judicial process at the end of the day that will override that.

**Ms Martel:** Can the ministry tell me how many birth certificates are cancelled in a year and how many may be denied? Then we’ll know.

**Ms Zimnica:** It isn’t currently done. The right of cancellation is a brand new right under the statute, so we can’t give you a number at this point in time.

**Ms Martel:** And do you have a sense of how many would be refused if you apply for the first time?

**Ms Zimnica:** We actually don’t anticipate a lot of folks being refused. People who are legitimately entitled to the document will be able to answer the questions and will get the documents. We really can’t guess.

**Ms Martel:** I was just trying to get at whether or not this really was going to be some kind of cumbersome

process involving all kinds of people and a lot of dollars. I suspect it isn't.

**Ms Zinnica:** If we do offer a right of appeal every time someone—the way in which the motion is drafted, it would allow the right of appeal whenever someone's certificate has been reported lost or stolen. I don't know how many people would avail themselves of that, whether you would have people just looking to create some havoc for the government and asking for a hearing when they get a notice that their certificate was cancelled. I can't even begin to guess, Ms Martel, as to how many we would cancel.

**The Chair:** Any further questions? Seeing none, I'll put the question on the amendment. All those in favour? Opposed? The amendment fails.

Shall section 9, as amended, carry? Carried.

Section 10: again a Liberal motion.

1600

**Mr Colle:** I move that subsection 52(4) of the Vital Statistics Act, as set out in section 10 of the bill, be struck out and the following substituted:

"Requirement re: hearing

"(4) Before making an order under subsection (1), the registrar general shall give interested parties an opportunity to be heard."

It's the same thing, trying to at least allow some kind of face-to-face hearing to take place. Whether we like it or not, bureaucrats make mistakes, and this is a huge bureaucracy in Ontario. I mean, we are creating a huge bureaucracy here with birth certificates. At least give that person a right to be heard, just in case there is some kind of lack of proper process or lack of full information, and don't rely totally on the bureaucrat, the registrar general, to make the decision. You can go to judicial review, but for an ordinary person, paying a lawyer \$1,000 every 15 minutes is very expensive. Anyway, that's a continuation, really, of our last motion in terms of trying to get a hearing in place.

**Mr Spina:** Section 52 already gives the right of a full hearing. The problem we have with this is that it talks about "interested parties an opportunity to be heard." We stand by the same argument, that it should be the individual who has the right of appeal. I think it is already there and available to the applicant, and that's why we would disagree with this motion.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour? Opposed? The amendment fails.

Shall section 10 carry? Section 10 is carried.

Section 11: any amendments or comments? Seeing none, shall section 11 carry? It is carried.

Section 12.

**Mr Colle:** I move that section 53.1 of the Vital Statistics Act, as set out in section 12 of the bill, be amended by adding the following subsection:

"No commercial use of information

"(3.1) An institution that receives information under this section shall not sell or otherwise use it for commercial purposes or advantage."

This is a bit of a fine point. There are attempts by the government in this legislation to restrict private corporations from profiting from this information. We are trying to tighten it up so that any other government agency or institution would be prohibited under the act from making this information available for commercial purposes or some commercial advantage. It's just an attempt to make it a little more aggressive in terms of ensuring that people's private information is not disseminated by this government agency or other government departments. We are just trying to tighten that up.

**Mr Spina:** We would agree that this particular amendment does what Mr Colle indicated. In a manner of speaking, it may be covered elsewhere, but this very clearly designates that, and we would support this amendment.

**The Chair:** Further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment is carried, which takes us to an NDP motion.

**Ms Martel:** I move that section 53.1, as set out in section 12 of the bill, be amended by adding the following:

"Definition

"(5) Despite subsection (4), for purposes of disclosing information under subsection (3),

"institution" means,

"(a) an institution under the Freedom of Information and Protection of Privacy Act,

"(b) an institution under the Municipal Freedom of Information and Protection of Privacy Act,

"(c) the United Nations, Interpol, or any government, or government agency, inside or outside Canada designated as an institution under the regulations."

I spoke to this on second reading and I had quite an extensive conversation with Mr Bailey, who is here, so he will guess what's coming and why. Let me break it into two areas. At the top of section 53, it says the "Duty to collect information" and says very clearly that the registrar general, if he or she considers it necessary, can collect information from a number of sources. We agree with that. That may be a hospital, that may be a funeral home, that may be a large number of places from which information will have to be sought to confirm it is correct. We don't have a problem with that.

Our concern comes in the section that says "Duty to disclose information," which puts an onus on the registrar general to disclose information to a number of bodies. Those bodies, as they appear in the government bill right now—it refers specifically, in (c), to "any agency, board, commission, corporation or other body, inside or outside Canada, designated as an institution in the regulations." I have a serious concern with "corporation" and I have a serious concern with "other body," which, to my way of thinking, is completely open-ended. There is no restriction on that whatsoever that I can see.

When I talked to Mr Bailey about it, he said the government's concern was primarily to be able to disclose information to organizations like the CIA or FBI when we were dealing with information that might involve

terrorism. I can appreciate that. I'm also concerned about the reference to "outside Canada," but I can live with that. What I'd like us to do, then, is as much as possible to limit the disclosure to the same. What I tried to do in the amendment was to put down specifically that the obligation refers only to government agencies. We have named the United Nations, we have named Interpol, if that will help the government, but we have restricted it to "government, or government agency, inside or outside Canada."

We would like the reference to "corporation" and the reference to "any body," which is as wide open as it can possibly be, to be taken out so we are very clear who we are sharing or disclosing information with. I see that as a protection for people. If the words "other body" remain, that could mean anyone inside or outside of Canada, and I don't think we want that kind of disclosure possibility. That's the purpose of trying to limit it to agencies that we thought might deal with terrorism or at least government agencies that may have a need to know that, but not to "corporations" and not to "body" as it appears in the text.

**Mr Levac:** Just as a question of clarification on what Ms Martel is concerned about, is there a rationale from staff or the government side on the definition for "corporation" and/or "other body" to assist me in helping me frame my concerns? I share with the government the concern about not having that information available when issues arise as a result of a birth certificate issue. We need to get that information to the appropriate channels. Can you define for me the corporation idea, the other body idea, to ensure it is not so open-ended that it leaves the door so wide open that this information can be shared with absolutely anybody? I'd appreciate it, position-wise.

**Mr Spina:** It raises an interesting series of questions. The key part of it is that the paragraph is a direct word-for-word extract out of FIPPA, which has been in place for 14 years, the freedom of information and privacy act. We have taken that exact phrase right out of the act, which is one reason we felt this amendment from Ms Martel was essentially redundant. I appreciate her efforts to specifically indicate the United Nations, Interpol, that sort of thing. But rather than have the specific bodies in the legislation, we would be looking at identifying specific bodies like that in regulation, because there may be temporary bodies set up. For example, there may be inquiry commissions set up on an international or a national or a co-operative basis. Therefore, it would be more flexible, obviously, to identify the specific bodies in regulation rather than legislation.

But the basic and fundamental opposition to this amendment is that we've taken it right out of the freedom of information and privacy act. That's why we felt it was the most effective.

1610

**Ms Martel:** If I might, I've got the information and protection of privacy act and the Municipal Freedom of Information and Protection of Privacy Act. The definition of "institution" in both cases does not refer to "other

body" and does not say anything about "inside or outside Canada."

**Mr Spina:** We were referring to the phrase—go to section 1, from what I understand. It says "any agency, board, commission, corporation or other body designated as an institution in the regulations." It is in section 1 of the act, Shelley.

**Ms Martel:** I'm looking at the information and protection of privacy act: "'Institution' means (a) a ministry of the government of Ontario, and (b) any agency, board, commission, corporation or other body designated as an institution in the regulations." Where's the "inside or outside Canada"?

**Mr Spina:** It doesn't say inside or outside of Canada, just any other designated as an institution in the regulations. In the regulations, therefore, we can define these specific bodies, whether they be inside or outside of Canada.

**Ms Martel:** But if what you're trying to do is make sure we have some kind of communication with regulatory bodies that deal with law enforcement, why wouldn't you try to define that? The government gave me the idea that the names of these things might change. I don't think the name of United Nations is going to change. Maybe the CIA will change at some point in the future. But it seems a moot point, because if the name changed, you could easily require an amendment to deal with the name change. Your definition of "body inside or outside Canada" could be just about anything.

**Mr Spina:** Well, as an institution in the regulations. In the regulations we would define the specific bodies that we feel would be currently eligible, for lack of a better way to describe it, for that information to be shared. But at some point, there may be special commissions that may be struck for whatever reason. I'm thinking of a war crimes commission or something along those lines. It may not have been specifically designated in the reg. It just makes it easier to alter the reg, as opposed to having to pass a piece of legislative amendment that specifically identifies this body we now want to co-operate with.

**Ms Martel:** Can you tell the committee, if the government has thought about this in that regard, who you've got in mind?

**Mr Spina:** We've talked about United Nations or Interpol, those kinds of things. At this point, we couldn't possibly predict a commission such as I described.

**Ms Martel:** I'm sorry. If you said you were going to do some of these in the regs, you must have an idea of whom you're—

**Mr Spina:** Oh, of some of the bodies that would be identified in the regs? Not at this point. Certainly, some of these are being given consideration, for obvious reasons, particularly with the concern that's arisen in the last couple of months; more particularly to have more security for our own residents, but to be able to help the international law enforcement community trace fraudulent use of our stats.

**Ms Martel:** So the ministry remains convinced that you will not have a private sector body, for example, that

would come forward requesting information on individuals and that you would have an ability to refuse—

**Mr Spina:** It is my understanding, and I stand to be corrected by staff, that nobody other than the individual can apply for this kind of documentation unless there is a substantial reason for that to happen. For example, if a person—I don't know—goes into a coma for whatever reason, there are other elements of the system that would kick in, living wills or that sort of thing, for another party to be able to act on behalf of the individual. It is my understanding that the only person who can apply is the individual or a parent or legitimate guardian. They are the only people who can apply for information under this process.

**Ms Martel:** But the provision that the government wants to put in is that it is the duty of the registrar general to disclose to a broad range of institutions, broadly defined.

**Ms Zinnica:** It is not envisioned that there's going to sharing with private corporations, but here's one example. Someone is born in Ontario and dies in Montana. We receive information that that person has died, so we can flag our system, flag that person's birth registration, so no one could fraudulently—we do what's called a birth-death linkage. They check the Montana obits and know that person has died so they come here to get a new birth certificate in that person's name and establish a new identity. We have information—it may not be reliable information—that that person has died in Montana. In order to verify the death, we would call up the hospital. The only way to get the information under the privacy rules as they exist is that we would have to give some information. "Could you please tell us about John Smith, born in Ontario, November 26, 1967, and here's his mother's name." We've disclosed personal information by making the phone call and asking for the information back. In order to get the verification, we need to disclose. Under the current IPC decisions and under the FIPPA legislation, you need statutory authority to disclose, and it has to be mandatory authority. That's the trick. You have to be obliged under your statute to give the personal information in order to meet the IPC and the privacy requirements.

That's an example. We can't know at this stage which hospital you'd want to designate.

**Mr Levac:** Mr Spina described for me "other bodies." I appreciate that clarification because it does satisfy me

in terms of the information being disclosed to other bodies because of the creation of a new body for terrorism purposes or an international body created after the legislation. That clarifies that. Your example still didn't give me an example of why we would put corporations in that. Would that be because of a private sector circumstance that owns the rights to that information?

**Ms Zinnica:** No. What I'm thinking of is a hospital in the United States that's run privately. That would be a corporation.

**Mr Levac:** Which is a private corporation.

**Ms Zinnica:** Right. It's not part of a government.

**Mr Levac:** Therefore, because it is classified as a corporation, you have to put it in here to cover off the idea of giving that information out in order to get it.

**Ms Zinnica:** That's correct.

**Mr Levac:** That's all I needed.

**Mr Spina:** Even our own hospitals are corporations.

**Mr Levac:** But they're public agencies at this point, aren't they?

**Mr Spina:** Well, that's for the lawyers to decide.

**Mr Levac:** I wanted to make the distinction of why corporations. People's impression would be, "Oh, God, they're going to give Texaco the information," because the employee happened to be there. But we're talking about a corporation designated under the regulations in order to receive the information you need to verify the death. Good clarification. Thank you very much.

**The Chair:** Any further comment? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment fails.

Shall section 12, as amended, carry? Section 12, as amended, is carried.

Are there any comments or amendments to sections 13 through 19? Seeing none, I'll put the question. Shall sections 13 through 19 carry? Sections 13 through 19 are carried.

Shall the title of the bill carry? Carried.

Shall Bill 109, as amended, carry? It's carried.

Shall I report the bill, as amended, to the House? Agreed.

Thank you very much. With that, we have done our duty again today with alacrity. Thank you all. The committee stands adjourned until the call of the Chair.

*The committee adjourned at 1619.*





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G-13

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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 5 November 2001

# Journal des débats (Hansard)

Lundi 5 novembre 2001

## Standing committee on general government

Adoption Disclosure  
Statute Law  
Amendment Act, 2001

## Comité permanent des affaires gouvernementales

Loi de 2001  
modifiant des lois en ce  
qui concerne la divulgation de  
renseignements sur les adoptions

Chair: Steve Gilchrist  
Clerk: Anne Stokes

Président : Steve Gilchrist  
Greffière : Anne Stokes



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 5 November 2001

Lundi 5 novembre 2001

*The committee met at 1540 in committee room 1.*ADOPTION DISCLOSURE  
STATUTE LAW AMENDMENT ACT, 2001  
LOI DE 2001 MODIFIANT DES LOIS EN CE  
QUI CONCERNE LA DIVULGATION DE  
RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 77, An Act to amend the Vital Statistics Act and the Child and Family Services Act in respect of Adoption Disclosure / Projet de loi 77, Loi modifiant la Loi sur les statistiques de l'état civil et la Loi sur les services à l'enfance et à la famille en ce qui concerne la divulgation de renseignements sur les adoptions.

**The Chair (Mr Steve Gilchrist):** Good afternoon. I'll call the meeting to order for the purpose of considering Bill 77. First off, we've allotted some time for opening statements. Normally we would have the government express the first thoughts, and then we'll work in rotation. Mr Miller?

**Mr Norm Miller (Parry Sound-Muskoka):** As the member representing the Ontario government, I am pleased to be here. I would also like to acknowledge the member for Toronto-Danforth, Marilyn Churley, who has spearheaded this bill.

Let me begin by saying that this government supports the need for further discussion and debate regarding Bill 77, the Adoption Disclosure Statute Law Amendment Act, 2001. We know that many families are supportive of reforms that will encourage and promote adoption disclosure. We look forward to these discussions so that we can do what's best for both adoptees and families with respect to adoption disclosure. We are committed to improving the adoption disclosure process to help reunite more families more effectively, more quickly.

Our government understands that people wishing to access their adoption records face many hurdles. Let me reassure members that we are also concerned about these hurdles. In particular, the historically long waiting list for searches has been unacceptable. That's why we brought in new measures to help reunite families and loved ones in a much more responsive way. For example, I am pleased to report that in March 2000 the government allocated an additional \$2.4 million to help reunite more families.

While we acknowledge there has been a high demand for active searches, the Ministry of Community and Social Services is making significant progress in reducing the waiting period for adoption disclosure—from more than seven years in 1998 to 1.5 years in June 2001. As well, as of June 2001, there were 719 adoptees waiting for their searches to begin. This is significantly less than the previous year, when 9,748 adoptees were on the list. We will eliminate that backlog in the near future. Moreover, the ministry will ensure that new search requests will be initiated within three months of applying to the register.

We are not planning to sit back, though. We know there is more to do and we will continue to work hard to speed up the process and allow adoptees to find their birth relatives sooner. I would like to share with members what the Ministry of Community and Social Services has done to support further measures for adoption disclosure.

There is no waiting list for the processing of matches between two parties who have voluntarily entered the adoption disclosure register, or cases in which there is extreme medical need. The ministry has reunited more than 30,000 adoptees and birth relatives who have voluntarily registered with the adoption disclosure register since 1979.

Since 1987, the ministry has also done 17,653 active searches to locate birth relatives and give them the option of reuniting or exchanging information. Ministry statistics show that we are successful in more than 90% of the searches in locating the individual being sought.

Within the current legislation, the Child and Family Services Act, we have also made a number of changes to adoption disclosure, including: we've given more detailed information to adoptees when their birth parents have died; we've maximized voluntary matches by comparing databases with private adoption registers; we've made the application process easier and more accessible; and we've established on-line access to the Ministry of Transportation's driver address databases.

Again, let me say that we have listened to the concerns that many people have about the adoption disclosure process. We know that many adopted Ontarians, as well as parents, want more access to the original birth registration and adoption records.

As members know, the purpose of Bill 77 is to provide adult adoptees and adoptees' birth parents access to adoption records that, under our current legislation, are released only upon the mutual consent of the birth parent

and the adoptee or where a medical emergency eligibility is met.

The bill proposed by the member for Toronto-Danforth also discusses a "no-contact" notice so that the birth parents could make their opposition to being contacted known. For some, privacy is paramount, and we need to respect those wishes. These are all-important issues and deserve further discussion and debate. Our government clearly supports any debate that is in the best interests of adoptees and their families. We are committed to improving the adoption disclosure process to help reunite families in a more responsive way.

**The Chair:** Thank you very much, and for the official opposition, Mr Parsons?

**Mr Ernie Parsons (Prince Edward-Hastings):** I bring kind of a varied background to this. Some of our children are adopted and two of my sisters are adopted. I'm not adopted, but we have for some 15 years now fostered children and we have had children with us at times for three, four or five years who have been moved on to adoption. When they've gone to adoption, invariably there has been no contact following that. So I have perhaps a very small sense of the loss of a birth mother and I have to say very small, it's nowhere near the magnitude, but there are occasions, a lot of occasions, when we would like to know how they're doing and would like contact with them. However, that's not the case at this time.

I am also in my 25th year on the CAS board and chaired the board for three years. There was a proposal some years ago for a law very, very similar to this, and at that time I was flooded with letters and phone calls and visits from birth mothers who had given a child for adoption for a multitude of reasons and were very concerned that that birth child have access to them. Not wishing to judge whether they did the right thing, these particular individuals had made the decision to not tell their future partner and to not tell their children that they in fact had had a child they had given for adoption. They were in great distress at the possibility of an individual appearing at their door and identifying themselves as their birth child. They had in fact on occasion had a commitment in writing, what they viewed as a covenant, with the children's aid society that their name would never be given. I am a believer that we need to respect a contract that was made. I have always had great difficulty with backdating history and backdating legislation, and I respect them for it, that that is a decision they made.

I do understand that there is a no-contact clause in here, but my experience with children we foster has been that the courts have at times issued orders barring the natural family from coming to our house, and the problem with a piece of paper is it's a piece of paper, it does absolutely nothing, and once that contact is made, it can't be unmade. We have had families who are barred by court order from coming to our home, but they still come. So a piece of paper means a great deal to a person who wishes to respect the law, but nothing to an individual who for a number of reasons is perhaps driven to make

that contact. I believe we owe it to the birth mother to honour the agreement that was made with her. I understand there are people who say that should not have been made, but it was made.

In addition, if we go back quite some time, my experience with CAS is the process for many of these young women when they gave up a child was for them to name the birth father. There was never any check done, and I suspect at times there were young men listed who had no knowledge of it whatsoever and may or may not have been the birth father.

Also, when Linda and I first applied to adopt, a question given to us by the agency was, "Are you comfortable adopting a child that is a product of incest?" We know that doesn't happen in Ontario, but the reality is it does, in more numbers than we want to know about. So for an adult now to find out that that is in fact their background, I absolutely believe there needs to be a counselling component presented to them, that they can consider that possibility. There is at times a very thin veneer on civilization, and the reality is that that exists.

I understand the intent of the bill, and when I look at how other jurisdictions view it I note with interest that they do not backdate the disclosure. They say, "Henceforth, from when the bill is enacted, there is contact," but they do not delve back 20, 25 or 30 years into history and present that.

1550

I have spoken to a number of individuals. As part of our foster parent association we've had individuals who were adopted and found their birth parent and they have come and shared with us that experience. Although the movies may present it always as a wonderful experience and that every birth family has just been waiting to reunite, the harsh reality is that for some it's been extremely pleasant and a growing and wonderful experience, and for others it has not. It has not been a good experience for some of the birth parents to have it happen. It has not always been a good experience, and we have had adopted individuals say to us that in hindsight they wished it had not happened.

I can't begin to give you statistics. I can only share with you my own personal experience, which is that this bill alters the fabric of adoptions that took place 20 years ago and I hesitate—in fact, I object to going back and changing the rules that far back. I believe that when we enact change, the change becomes effective now.

What we need to see done is more funding and more work put into the adoption disclosure registry. It's not my job to make the government look good, but there have been some improvements in terms of funding in that. But that provides an opportunity for all of the partners to agree to it, not one or two.

I have been, as I suspect many others on this committee have, inundated with e-mails and letters over this issue. It would be far easier for me not to have substituted on this committee, not to have appeared. But with my 25 years' experience in the child welfare field, I have great difficulty supporting this bill as it is presented.

There may be amendments that can make it palatable for me, but at this point in time I believe we are in a position that, if it is passed as it stands, it would cause distress to a significant number of individuals in this province.

**The Chair:** Thank you, Mr Parsons. Now we go to the sponsor, Ms Churley. This gives you a chance to not only make comments but any responses as well.

**Ms Marilyn Churley (Toronto-Danforth):** Thank you for that, Mr Chair. I appreciate it.

First of all, I want to thank many of the people who are in this room today, and many who aren't here, for all their hard work. Some date back to 1975 in their lobbying efforts to bring us to this point yet again here today. There's Parent Finders and the Coalition for Open Adoption Records, the Canadian Council of Birth Mothers, Bastard Nation and more that you will hear from.

Mr Parsons, I'm actually glad that you chose to sit on the committee, because I fully expect that after you hear from these people you may change your mind. There are a lot of myths and misunderstandings about the opening up of adoption records. Indeed, Mr Parsons, when you spoke, one of them was glaring. I believe you stated that all the adoption disclosure reform in other jurisdictions was not retroactive, which is not the fact. In this case, Ontario has fallen way behind. I can name many jurisdictions.

I'm going to be handing a package around to people from New South Wales, which is probably the best example to look at. It's a jurisdiction that changed its adoption disclosure laws in 1990, very similar to the bill before us today, and did a review in 2000 and looked over what had happened over the past 10 years. The bill is very similar. It goes further than mine, in fact, in terms of no contact vetoes, the same kind of rules about disclosure for both birth parents and the adult adoptees. I regret that I couldn't get the report to you before, but I do want to thank our researcher, Susan Swift, who did provide some information about other jurisdictions across the world that have similar legislation.

In Canada, we could look most closely at British Columbia, which brought in an adoption disclosure law several years ago. It as well has been very successful.

There are concerns raised about, for instance, birth parents, birth mothers being promised confidentiality. I wasn't promised that. I think most people know that I am a birth mother. I gave birth to a child as a teen and relinquished that child, and over five years ago reunited with him through my own efforts and with the help of Holly Kramer from Parent Finders, who is here today.

That is not to say that all reunions are successful, and it's not even to say that all people actually want to meet. I see this as a human rights issue. It's a bad law that we adopted from England in the 1930s. It was adopted at a time when there was shame attached to having a child out of wedlock, and shame indeed attached to infertile couples. At the time, nobody looked at the right of the child and the need of the child as that child grows up and that need to know who they are biologically. I can tell you from my own personal experience and from the

hundreds, by now, of birth mothers and some birth fathers and adult adoptees who have reunited and those who got information and did not have a successful reunion, how pleased people are in most cases that finally they know who they are. The birth mother understands and knows that her child grew up and is doing OK, and of course for the adult adoptee that gap in their lives, the thing that we all take for granted, we don't even think about—we all look like our uncle or our grandfather. We look in the mirror and see a reflection. That's important to people, to know your biological roots, to know your history.

Fundamentally, what this bill is about is updating a ridiculous system that no longer works. So I would say to Mr Miller that this is not about improving the existing registration system. It doesn't work for people. We are so far behind. Newfoundland, BC, the Northwest Territories and numerous states in the United States have moved forward with bills. This is actually, in my view, limited adoption disclosure reform, because many years ago a consensus was reached around this piece. There are many aspects of the adoption triangle that aren't addressed in this bill. In fact, some people from the large adoption community would have liked to see it go further in some ways.

Before I complete my opening statements, because I think it's important that we hear from the people here, I do want to point out to members, particularly members new to this issue, that it isn't new to us.

In 1975, the Toronto chapter of Parent Finders began the lobbying efforts to change the system. That's how far back it goes. In 1976, the Conservative Minister of Community and Social Services, the Honourable James Taylor, commissioned a report on the reform of disclosure legislation, and that report recommended that the system be changed to grant information. In 1979, Ontario instituted Canada's first adoption disclosure registry. Then Dr Robert Elgie commissioned Dr Ralph Garber to conduct an investigation on the reform of disclosure legislation. Garber's report, like the Taylor report, made the same kind of recommendations for adoptee rights, and it was ignored. Again in 1987, there were changes that went part way to reforming the Child and Family Services Act, but didn't go far enough.

In the early 1990s, the registrar of adoption information held hearings in Toronto, London, Windsor, Ottawa and Thunder Bay to determine the communities' feeling about reform. There were all kinds of protests. I remember it well. The adoption community just came out in the hundreds supporting the change.

As people will recall, in 1994, when we were in government, just before the election, Mr Tony Martin brought forward a private member's bill similar to mine which didn't quite make it through third reading before the House prorogued. It died on the order paper when an election was called.

Alex Cullen introduced a bill when he was a Liberal member that didn't go forward.

In 1998, I introduced Bill 88, which went through second reading and died on the order paper. Then again

in 2000, I introduced Bill 108. It too had the sad death of dying on the order paper when the House was prorogued.

Now we have before us, in 2001, Bill 77.

1600

You can see that the adoption community is out in droves today. It is with some excitement but some trepidation as well that we've come this far. I want to thank all the members of the House who allowed this bill—it's unusual for a private member's bill. I was allowed to have it pass second reading and go straight to committee. I and the community are extremely grateful for this opportunity.

You all know what the bill entails. I won't go into the details. We will of course have to have time to work on the regulations, to move forward, but I hope very much that after listening to this community, which has been involved in this issue and has been let down so many times after coming this close, this time we can together, in a non-partisan way, bring this bill forward and actually have it pass through the House so we can begin to work on regulations and, a year after that, actually have the bill finally in place. So I thank you for this opportunity.

#### PARENT FINDERS, NATIONAL CAPITAL REGION

**The Chair:** That takes us through the opening statements into the presentations. Our first presentation this afternoon will be from Parent Finders, National Capital Region. I invite their representative to come forward to the witness table and introduce yourself for Hansard. Just a reminder that we have 20 minutes for your presentation, including any time you care to leave for questions and answers.

**Mrs Monica Byrne:** Thank you very much, ladies and gentlemen. My name is Monica Byrne. I come here as the registrar of Parent Finders in Ottawa and as a birth parent. I'm interested in the fact that we talk about the issues so happily among us, but we have lived this issue. We are the people who have experienced adoption at the primary level. I am the birth parent. We have adoptees here and adoptive parents.

I speak to you as though I'm in the trenches now. I feel as though this is *déjà vu*. I was here before, in 1995. I've been involved since 1986. This matter has come back and forward and back and forward so many times, and it's really important that you are here today to hear our arguments. You are the lucky ones. There are a lot of people who are not here to hear the arguments around adoption disclosure reform.

Adoption disclosure reform is a long time coming in this province and we're sadly lagging behind a lot of other places. We feel often that decisions are made for us. I hear people telling me all the time what a birth parent feels, what a birth parent wants. These are people who are not birth parents. I am a birth parent. I'll tell you what I want and what I believe in as a member of my community.

Briefly, I'll give you my own personal story first. I am a birth parent from 1966. I am first and foremost a

mother of four children, three that I had in my family with my husband and one that I had outside my family before I was married to my husband. My husband is the father of my child. For all the years until she was 21, I thought about her every single day of her life. She was just as much my child as my other three children, only she was not with me. She was with another family. I was not raising her. It didn't mean I didn't care. It didn't mean I didn't love her. She was merely not in my family any more. I had signed away rights to parent her. It didn't mean I didn't care.

I was never promised confidentiality. I never requested confidentiality. I filled in no forms. I was asked to fill in no forms. There was no agreement around confidentiality. I was told in fact at the time that when my child turned 18, I would be able to find her. That was told to me, and I held that memory in my hand for years and years, that I would be able to go back to the children's aid and find out where my child was. When she was 18, I did go back, and I discovered that that had been a lie that had been told to me to pat me on the head and have me go away quietly.

I gave her away strictly because it was 1966. I was in university. I was unmarried. My husband-to-be was in university. Being an unwed mother in 1966 was not on. There was no way for that. We all know that, all of us who were there in 1966. You didn't keep a child out of wedlock, period.

I think over the years what has strengthened me to come and speak to groups and to join Parent Finders is the fact that I got sick of being spoken for. I was always being spoken for. Lawyers told me what I should think, social workers told me what I should think, society told me how I should feel, and I'm telling you how I feel. I feel that I should have had, and should still have, the right to reach my adult adopted child should I wish to meet her.

It got me going, and I went and found my daughter. I found her in Ottawa, living five minutes from me. I found her without the help of anyone but myself and good search methods. I should not have had to do that. This was my child by blood. I wanted to know if she was all right. I did not want to muscle into her adoptive family. She had a wonderful adoptive family. She had wonderful siblings and good parents. But she also had my other three children as her full siblings, and I wanted her to have the right to say, "I don't want to know you," or "I do want to know you," whichever she wanted. It was up to her, but I wanted her to have that opportunity.

Knowing my daughter now for 12 years has been the joy of my life. I stopped thinking about her every day of the week. Every morning as I awoke, I would think about her and wonder if she was all right: did she need help, did she need to know us, did she need money for university, did she need anything? When I found her, I stopped doing that. I stopped agonizing over where she was and if she was well.

Since that time, my daughter has presented us with a beautiful grandson. He was eight months old yesterday.

We know her family; she knows us. It is the ideal, but it hasn't been easy. She has two families, that's all. We don't muscle in on her adoptive family life; she doesn't muscle in on whatever. We are two blended families. It works and it can work. So that's my story.

Since then, and during the last 15 years, I've been involved with Parent Finders because I was so upset with the system. I became the registrar of a very large group in eastern Ontario, in Ottawa, and it is a large group. It's the second-largest in the province.

Over that time, I have personally been involved in over 800 to 1,000 reunions, so I know what a reunion entails. Not all reunions are happy; not all reunions are sad. Reunions are what they are—they are the bringing back together of family members who have been separated in some way. They don't need to have expectations of perfect joy. None of us in our normal lives has perfect family relations. Some of us have relatives we really don't want to spend time with and other relatives that we love to spend time with, and that's OK. It's fine not to like what you find. The expectations that are set up sometimes with this whole reunion process are that it's got to be good or it's going to be terrible. I was really grateful to Mr Parsons for bringing up all the bugaboos and the scary ones, the scary stories, the potential for incest stories, rape stories, finding parents who don't want to be found, people who will stalk people. This is a human story we're talking about. This is normal, everyday life we're talking about. These are just people who would like to reconnect as blood relatives for the reasons that we all know and you will learn.

Over the next two or three days you're going to hear many people giving you good arguments—legal arguments, social arguments, psychological arguments, every kind of argument—as to why this is a good idea, but I can tell you, as a birth parent, I would have liked to have the mechanism within the system that I could have found my daughter, who was over 21 and an adult—and I was well over 21 and an adult—without going through the hoops I did. It was unfair and unnecessary.

Since my time with Parent Finders, I have seen every kind of situation and reunion story possible. I have heard all the stories. I have had international adoptions, I've had cross-border, cross-country, crosstown, cross-anything. These are all just human stories.

1610

I've also personally run, with another lady, an intensive support group for people for more than five years, dealing with the long-term issues around this. Closed adoptions and secrets create huge problems. They can be very rife with issues. Secrets are not healthy. Secrets create fantasy and myth, and you will hear more about that from other people, I'm sure. Current psychological studies on adoption generally find that many people within this closed adoption system suffer a lot from the secrecy. It is not a healthy thing to have. It is better to know the truth than to know nothing: nothing breeds fantasy. People create all sorts of myths, so it's a problem.

For adoptive parents, all the adoptive parents I have personally helped to assist their grown-up children to find their birth families have had better relationships with their children and, as good adoptive parents, have wanted what was best for their child. If it was best for their child to find their birth family, so be it. I have helped adoptive parents of very young children find their birth families, always with success—always. In all my years in this business I have had perhaps three or four birth parents refuse contact, and it has usually been around the reason you gave: they didn't tell their families. But over time, if gently treated, if it is possible for them to know the child who is now an adult, it can happen and it can work well. They don't have to spread the word to the entire family. There are ways to deal with this.

We have found, and I have found, working in this system, the closed system, that the delivery of service in Ontario is not even across the system. Although the government likes to tell us of the improvements to the adoption disclosure registry—“Yes, indeed, seven years is now one or one and a half”—it wasn't seven; it was more like 14 that people waited. I have had people come to Parent Finders who have been 12 years on the waiting list for search service—12 years. In that time their birth parents have died; people have succumbed to all sorts of things. It is problematical. The delivery of service within the agencies is not even. In some agencies you wait five years for non-identifying information—five years for two or three pieces of paper about your background. In other agencies it's two or three months. In some agencies there's no service at all if the adoption disclosure worker is away: “No service, sorry”; mandated service, but “Sorry, we can't help you.”

We have also found that insufficient information is given to people when they go to the agencies. They are not always notified about the adoption disclosure registry, about all the services available. Many agencies are very good about that, but not all. Sometimes we have found over the years when these problems have piled up that the government has thrown money at the ADR, hired a few new staff, reduced the levels, taken away the pressure, and it's gone again. We in the parent finder groups get the backlog. We are inundated, and have been for years and years, with people who are not getting service from the government. We're free and we're volunteers. It's not fair; at a human rights level it isn't fair.

This bill, Bill 77, is a start. It isn't the perfect bill, there are a lot of things missing in it, but in the interests of passing it, many in the adoption community have agreed to accept much less than they would like in order to have something happen to improve Ontario's adoption laws. They're not good enough. BC has had its adoption records open for years and there isn't a problem. There really has not been a problem. The idea of people coming out of the woodwork and stalking each other—if you knew the adoption community, they are a very cowed, shy, shamed group of people. They tend not to go out and stalk people. If they did, we have stalking laws, we have harassment laws and we have a lot of other laws. What

we're doing is criminalizing the need for blood relatives, the need within blood relatives to reconnect. How can we equate them with bank robbers and with other criminals when these are just family members trying to find each other? So we have criminalized a whole group of people by suggesting that they might want to break the law in order to find each other. We have to be careful not to pathologize the need to have a reunion. We make it almost into an illness that you should want to know your origins. I find it bizarre that we would pathologize the need to reunite with one's birth relatives.

The last item I'd like to mention is the retroactive quality of the clause. We are all representing the past. We know that today's adoptions, the few that take place, tend to be open. Adoptive parents today understand what we're talking about. We're talking about 1950, 1960, 1970. We are the survivors from that time, and that's why we want this bill to be a retroactive bill. It's no good opening it up now. It doesn't help me or my daughter or anybody else's son, daughter or parent in this room.

One last item: there was a large ad in the *Ottawa Citizen* the other day about disabled people and the provincial government being very interested in providing full service to special-sector groups to make them equal in Ontario. I consider the adoptive community a special-sector group, and if the government is committed to making access to services fully available, then this is a special-sector question. Thank you.

**The Chair:** That affords us about three minutes left, and it's normally the practice of the committee, when it's that amount of time, to allocate it to one party. We always start the rotation with the official opposition, so I afford the opportunity to Mr Parsons.

**Mr Parsons:** We're not enemies. I can appreciate what you're saying but I've seen different strata of society in my 25 years with children's aid than you have. I have seen children give up for reasons that I suspect may not be represented in this room. If changing the law would destroy one mother's family in my riding, then I'd have to be concerned.

I was intrigued that you strongly believe that secrets are bad, that there should be no secrets. Two minutes later you said, "There's no need to spread the word to the other children." I would infer that means to keep it secret from the other children. I wonder if you can clarify that for me.

**Mrs Byrne:** OK. When a birth mother wants to keep private some of her personal life when she has not yet told all the family, we don't believe that it needs to be broadcast immediately. The secrecy part comes in the origins of the adoptee and what happened to the adoptee with the birth parent. They are the principals in this issue and the secrets should not be between them. That's what I mean. Other family members who are not relevant in the story may or may not find out later.

Again, we create issues. I have had birth mothers come to me and say, "My husband doesn't know. This is going to destroy my marriage"; and a little while later I'd say, "Are you sure this will destroy your marriage?"

Because if this will destroy your marriage, what kind of a relationship have you got?" One could pinpoint and blame adoption revelations for the destruction of the marriage, but I would suggest that there would be other problems there. Usually when I have had birth parents say to me, "I don't want my husband to know," we can work it out so that the husband for a while doesn't need to know and she will tell him in time, in honesty. Again, in my experience from many of these reunions with exactly that problem, it is just a paper tiger. It isn't there. That's from my experience.

**The Chair:** Thank you very much for coming before us here this afternoon. We appreciate your presentation.

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#### ADOPTION REFORM COALITION OF ONTARIO

**The Chair:** Our next presentation is from the Adoption Reform Coalition of Ontario. Good afternoon. Welcome to the committee. Again, we have 20 minutes for your presentation.

**Mrs Patricia McCarron:** Thank you. My name is Patricia McCarron, I'm here also as president of Parent Finders, National Capital Region. ARCO, or the Adoption Reform Coalition of Ontario, is our lobby arm, if you can call it that.

Very quickly, I am an adoptee reunited 10 years ago and I joined Parent Finders in 1991.

Just to give you a brief update on what Parent Finders is, we are a volunteer support group. We have our own private registries, and we believe in having people who have been separated by adoption reunited. We are part of a national organization. There are many chapters here in this province, but we connect with other groups across the country.

In our own database we have 12,000 birth entries. We've been involved in over 1,200 reunions. We've registered over 3,000 active members and we've supported and/or co-sponsored at least six previous bills on adoption disclosure in Ontario. We're also part of an international network of search and support groups. Let's just say we're well connected.

The PFNCR started in 1976. We had our 25th anniversary in June and I brought my souvenir mug to show you. When I stop and think about it—25 years in business trying to put ourselves out of business and I keep saying this to our members. We're here to help people find, we want to help open the records and we've been active in lobbying during all that time.

The change is long overdue. We fully believe that this bill is a good start. Again, it's not everything that we would like, but we're definitely behind it. The changes to the Child and Family Services Act that occurred last year addressed the needs of children in care. They did not address adoption disclosure. However, this again is a good start, and thank you, Marilyn.

Basically, I'm just going to give you our position on Bill 77 regarding the first amendment, which would give

adult adopted persons unqualified rights to access their own birth information, and the corresponding rights to birth parents. We obviously fully support this and, based on other Canadian jurisdictions and others across the world, we believe that for adult adoptees to access their original birth information is a civil right.

We firmly believe in the principle of equal access and this is why it's so important that Marilyn has brought in birth parent rights. At some point you may also consider extending that same privilege to adoptive parents and minor adoptees, because we have had members in our group trying to search for birth parents of minor adoptees.

Something for you to think about: say you were to enact this bill tomorrow and I got my original birth certificate; that does not mean an instant reunion the very next day. A lot of people get scared with that idea. They think there are going to be 20,000 reunions the very next week. That's not what's going to happen. All you do is get access to a form that's 45 years old. It gives you information that's 45 years old. It gives me, maybe, a full name and an address; maybe my birth father's information if I'm lucky, if it's on there. Then I go on my search. I still need to do all that work, if I want to.

I personally sat on my birth mother's name for 13 years. For that period of time all I needed was the name. For a lot of people just getting a name is very important. Many of the adoptees born after 1970 only have an initial for their last name on their adoption order—Patricia M—with a number—12345—very degrading. You sound like a bar code. So, again, for many adoptees, just getting that name is very important.

Now, the next amendment, which would allow adult adopted persons and birth parents to file written notices, the infamous contact veto: Parent Finders is fundamentally opposed to any vetoes of any sort, but we do acknowledge the need for some kind of a mechanism which would respond to concerns of some people for limiting contact. Again, it seems bizarre and unreal that we have to have legislation to impose punishment on family members who want to reconnect. Again, go to the no trespassing notices, the restraining orders, whatever is already in place, but for gosh sakes, don't create a new law just for us.

We wish to clearly emphasize that where there have been contact vetoes in other legislations, it hasn't been a major problem. The default system right now is for protecting and closing everything and now that has shifted. You have to put the legislation back so that the default is for those who want to search, not for those who want to have it closed. Where there has been an opening of the records, I think the number of people who have placed contact vetoes is about 4%. So you've got a law for 4% of the people trying to keep it closed. What about the other 96% is what I'm trying to say.

The third amendment would eliminate the need for mandatory counselling before a reunion takes place. We absolutely, fully support this amendment. We feel the client should determine his or her need for counselling

before or after a reunion takes place, whether it's from a professional social worker, a counsellor or just some peer counselling from a volunteer support group.

The last major amendment would entitle adult adopted persons to access their information at age 18, while the birth parents would be able to access the information on the adult adopted person when they reach the age of 19. Again, we agree to this.

We would definitely, definitely support anything that would include backdating the legislation. You cannot invoke this from this day forward. You barely need to. Most of the adoptions now are outside the CAS and they're open. There's nothing in law right now to recognize open adoption, so that needs to be addressed as well.

The issue of funding: I'm sorry Mr Parsons is not here. He mentioned adding more money to the system. No, you can cut staff at the ADR, you can reduce the need for searchers and you can increase your revenue at vital statistics by charging \$50 or whatever for a long-form birth certificate. So there you've got some revenue coming in and the possibility of reduced staff at the ADR once all those lists are down. Again, I think the funding issue would be more in the government's favour.

Personally, I do not need this legislation. I found my family, I have a good reunion. It's 10 years later. Why am I doing this? Why am I here yet again, taking two days off work, travelling a thousand kilometres, re-arranging child care? Because I believe in what this is all about, I believe in what I am doing and simply because it's wrong—the law is wrong and we have to right it. It's now up to you to do so. Hopefully, this is the last darned mug I'll have to get made and we will not be in business in the next 10 years, other than for peer support or peer counselling or something like that.

I remember on one of my visits to one of the members, he said, "Private members' bills are notorious for not reaching the top of the pile, but if it's a good bill and the subject is strong enough, they go, they come, they go and the good ones rise to the top." I can only pray that he was right and that we're finally at the top of the heap.

Thank you very much. If there are any questions—

**The Chair:** You have, in fact, left us with about 11 minutes for questioning, so we'll divide that among the caucus and start this time with Ms Churley.

**Ms Churley:** Thank you for your presentation. I'm in the same position as you. I don't need the law for me any more, but I want it there for the countless others, and basically for the same reason: the existing law is fundamentally flawed and wrong. Other jurisdictions have figured this out. There is all the evidence, as you pointed out, around stalkers and all these things that I acknowledge people have concerns about. It's our job to listen to those concerns and be able to respond positively, because we've done the research. We've got it all here.

I guess my question to you would be around the biggest concern that I'm hearing from those who are frightened by this bill, concern about the birth mother, and it's very real. I've talked to some who have been in tears: "If my husband finds out about this and my other

kids, it'll finish the marriage." I've explained to them that although lots of people in the adoption community do not like the no-contact veto, that is why it is there: to give them and those legislators who are concerned about this that comfort. I would like you to expand on the information you have around how that no-contact veto has worked in other jurisdictions.

**Mrs McCarron:** From what I understand, especially in the New South Wales jurisdiction, and even in BC, the figures have been about 4%, as I mentioned. The ones placing vetoes, especially in New South Wales, have a system where you put in a written reason why you do not want contact. Maybe someone's going through an illness, a divorce, a death, or whatever; it's not a good time in their life to have a contact. That's fine. It doesn't mean that tomorrow, next week, in six months or a year they would not wish to have that contact. Do not close the doors forever, which is what we do now. They get one chance when they get contacted by the ADR and then that's it. So, if you must impose the no-contact veto, at least impose the necessity of putting in a written reason. If I'm an adoptee and my birth mother writes me a letter and says, "Please do not contact me. My family doesn't know," for this or that reason, that's all I need to know. I'm going to respect that. At least there's some contact, some feedback.

1630

Let me give you a personal side to this. Mr Parsons mentioned the infamous argument about incest and rape. Those are the minor, few cases. I am a product of sexual assault. My birth mother was not properly introduced to my birth father. What can I say? Fifty per cent of my genealogy is gone forever; I will never know. However, she was more than happy to have contact with me. She was told that when I turned 18, I could go looking for her.

She had no knowledge, no concept at all, of her rights. She didn't think she was allowed to search. She had no idea what the Child and Family Services Act would allow her to do, and she was more than happy to hear from me. Again, she wasn't happy about the circumstances surrounding conception, but it didn't mean she didn't want to know me. I contacted her privately. The rest of her family—the siblings at the time—did not know. You can do that in a calm manner. You can do that one-on-one. You don't have to go in with guns blazing, and that's what we try to tell people when they're making these sensitive approaches. Does that answer your question? I sort went off the track.

**Ms Churley:** Yes.

**Mrs McCarron:** Any other questions?

**Ms Churley:** I think my time is up.

**Mr Joseph Spina (Brampton Centre):** Thank you both, you and Monica Byrne, for making your presentations. We appreciate it. I'm not sure whether Ms Churley is proposing amendments; she's likely looking at some things. We'll have to look at that when the time arises.

The interesting thing really is around the contact veto here. As you know, part of the concern of the government in general is that—

*The quorum bell rang.*

**Mr Spina:** A quorum call, I guess. Sorry, folks. It's part of life in this building.

Part of the concern around your proposed amendment around the contact veto—you cite the situation of the other jurisdictions. I'm wondering what would be—I'm not sure whether it would be better or not—the difference in the approach. "Contact veto" would mean the files are disclosed or are open, and then if someone wished to declare a veto for contact, it is made at that point.

**Mrs McCarron:** Correct.

**Mr Spina:** I'm wondering if the converse would be as effective, where the files remain closed and the consent is sought when the request is made by either party.

**Mrs McCarron:** I'm sorry; I don't understand the converse.

**Mr Spina:** At this stage, I think the assumption would be that the files are open unless someone declares a veto for a contact.

**Mrs McCarron:** Yes.

**Mr Spina:** The converse would be that the files would be closed, as they are now, unless consent is received upon the request.

**Mrs McCarron:** Which is what we have now.

**Mr Spina:** The concern we have is on the part of the privacy commissioner. The way the current privacy laws are designed for the protection of the consuming public and for the files, the files would remain closed. The Information and Privacy Commissioner is viewing the bill as it's currently proposed—it doesn't mean it can't be amended. But as it has currently been tabled, the privacy commissioner has a problem with that. I just wonder if you have a difference in the perspective of how that would be handled.

**Mrs McCarron:** I guess it's back to balancing the rights of the adoptee to know who they are and where they came from—what we call an unqualified right of access; in other words, no disclosure veto, I absolutely have the right to know my birth name—versus the right of a birth parent to know that their adopted child is OK. So you're balancing the rights of access to information, and that's why I said a while ago that I believe—Parent Finders believes—in the right of equal access: the adoptee, the birth parent and the adoptive parent. They're all involved in this. You can't pull one out, I don't believe. They're all connected. I don't think you can separate.

If you don't do anything, if you leave it closed, as you're saying now, then we're right back to where we started and nothing is changed. The contact veto is there for you; it's not there for us. It's there to make people feel better. It's there for the 4%, and it's there for you to have something to take back to the birth moms or whoever wants their files to remain closed. That's fine. I concede that point; a lot of people won't. But I still believe in the unqualified right of myself, of any adoptee, to know who I am. I think that's paramount.

I also believe it was my birth mother's right, if she'd known about it, to come and look for me. If I didn't want to meet with her, I could tell her no. Once contact is made, no, you can't undo it. But on the other hand, at least they know who you are, you know where the other person is. It's like a marriage. Things don't stop on the wedding day. The marriage goes on after the wedding day. The reunion goes on after the reunion takes place. Everything gets hyper at the moment of contact, but after that, things settle down. In our experience, it takes seven years, 10 years, for things to settle into a normal stream.

I've been in my reunion for 10 years, and I'm still adjusting and things are still happening. Things aren't rosy overnight. It's sort of a life experience. So again, even if it's bad at the beginning, things can change, people can evolve. You deal with it, whether it's a happy story or a not-so-happy one. It's the truth; I deal with it. That's my fact of life, and I go on. What more can I say?

**The Chair:** Thank you, Mr Spina.

**Mrs McCarron:** I think my time is up.

**The Chair:** No, now we're over to Mr Parsons or Mr Colle, if they have any questions.

**Mr Mike Colle (Eglinton-Lawrence):** I guess the question I have is, trying to get a complete perspective on the issues that have been brought forward with this bill, how could we ever expect to hear from, let's say, the birth mothers who don't want to have disclosure, since they would be very much against letting themselves be known to us or wouldn't write letters or call us because they're trying to perhaps conceal it or still keep it very confidential? How is it possible for us to estimate their feelings or their comments on the legislation?

**Mrs McCarron:** I come back to my 4%, and that's what we call hard figures in terms of the number of contact vetoes that were put in by birth parents in jurisdictions where this legislation has gone through. Personally, I can come and tell you all about the people who joined Parent Finders. Obviously, they're searching; they're not the ones who aren't searching. The ones we have helped in their search and whose birth mothers did not wish to be found—yes, we've had them. We can still have a contact; it doesn't mean you have to tell the rest of the family. But again, it's one of those myths where everybody throws up that birth mother, and that's what Monica was trying to explain. Everybody's always talking for the closet birth mother. There are not that many of them, and that's what we need to change in our way of thinking. We've got to change the default system.

**Mr Colle:** How do you arrive at the figure—the fact there's not that many of them? What is it based on? I'm not quite sure.

**Mrs McCarron:** Statistics from the other jurisdictions that have counted the number of contact vetoes that have been filed: New South Wales, Australia and BC. They're all around that figure. If I'm wrong—

**Mrs Byrne:** Three to four per cent.

**Mrs McCarron:** Three or four per cent.

**Interjection:** It's 2.5% in BC.

**Mrs McCarron:** And 2.5% in BC is the updated figure. They've had it in place for four years. I'd say the figures speak for themselves.

**Mr Parsons:** Is there time to follow up?

**The Chair:** Yes, you have about a minute and a half.

**Mr Parsons:** That 2.5% to 4% would reflect where the adoptees have tried to find the birth parent and the birth parent said no?

**Mrs McCarron:** No, it's the number of birth parents who have placed a contact veto, a wish for no contact.

**Mr Parsons:** They've just gone to a registry, then, and placed that?

**Mrs McCarron:** When the British Columbia government enacted its legislation, they did this massive ad campaign and basically said, "Anybody who wants to put in a contact veto has one year to do that." The ones who did had the chance to do that, and I guess they continue to update those notices every now and then. Initially, the numbers were a little bit higher, and now they're down to 2.5%. So it becomes a non-issue. What they found in New South Wales was that after 10 years there are hardly any contact vetoes put in place. Open adoption disclosure is a normal way of life, and it's not a big deal any more.

**Mr Parsons:** I really sound like I'm arguing, and I'm embarrassed about that, but could it not be that for some birth mothers, going forward and filing a veto would, from their viewpoint, be making a disclosure?

**Mrs McCarron:** No, that's a disclosure to the adoption disclosure registry. It would not come to the adoptee.

**Mr Parsons:** I understand that, but there could be a fear that once you tell the government—

**Mrs McCarron:** They already know. He's got my file, he's got my birth mother's file. They know they're on file. They had to go through a court system. There was a judge who signed the adoption order. So they're in a file already, for better or for worse. I hope that answers that question.

**The Chair:** Thank you very much for coming before us here this afternoon.

**Ms Churley:** Could I have a point of information just very briefly, and it really is a point of information. I'll prepare a written report on the freedom of information act. I did consult with the commissioner, and she says in her report that it falls outside the scope of the Freedom of Information and Protection of Privacy Act. But she then goes on to give her opinion, as have FOI commissioners who have said almost identical things in other jurisdictions where they went ahead anyway, because it's fundamentally a public policy issue. The concerns in fact never happened. I will prepare some information for the committee on that. I think you'll find it interesting.

1640

#### PARENT FINDERS INC

**The Chair:** Our next presentation will be from Parent Finders Inc. Good afternoon and welcome to the committee. Would you introduce yourselves for Hansard.

**Ms Holly Kramer:** Good afternoon. My name is Holly Kramer and I'm the president of Parent Finders Inc. With me here this afternoon is Brian Macdonald, who is the vice-president of PFI.

We'd like to begin by saying that we bring a perspective to this committee which may be a little different from other presenters. As you've heard, Parent Finders Inc is the oldest and largest peer organization for members of the adoption community in Ontario. Representing our 17,000 registrants, who are adoptees, former crown wards and birth and adoptive relatives between the ages of 18 and 85, we bring more than 26 chronological and countless cumulative years of experience about searching and reunion to this forum. As a result, we are in a uniquely good position to comment on the necessity for and potential effects and general workability of the provisions in Bill 77.

I'd like to add here that in 26 years we have never had anyone who came through the Parent Finders registry and had a reunion say that they wouldn't do it again, regardless of what the outcome of that reunion was, no matter how good, no matter how bad.

It's National Adoption Awareness Month, and once again we have come before a standing committee to make known our position on the blatant discrimination inherent in existing adoption disclosure legislation. This is legislation that was enacted in the early part of the last century and hasn't changed much since. As others have told you, this is the fourth time we have come before such a government committee, advocating reform and redress since 1977, and the fifth attempt at fundamental change since 1994, when Bill 158 gained all-party support but was filibustered, out of ignorance or fear, by two or three members of the Legislature to prevent it from coming to a fair vote.

With that in mind, one apparent concern about the disclosure of adoption information concerns the identification of so-called putative fathers. Some people seem to be unnecessarily concerned about disclosure of information contained on birth certificates because they don't understand that the name or other particulars about a biological father is not contained on any statement of live birth unless he signed the document at the time. Further, adopted persons cannot make any claim on their birth parents' estates unless the adoptee is specifically named in the will. Although concerns about allegations of paternity or claims respecting inheritance are unfounded, they may fuel some of the resistance to change.

As you've heard, in 1979, Ontario enacted North America's first adoption disclosure registry. This was a first step toward recognizing the basic human right of adopted persons to have access to their own birth information, a right taken for granted by all other Ontarians. As Ms Churley was pointing out, since Ontario took that first step, all the other provinces and several of the states have followed suit. British Columbia even granted full disclosure to both adoptees and birth parents in November 1996. All of those places have done it retroactively. But progression toward equality and honesty

has been at a standstill in this province for almost 23 years, despite the repeated government-commissioned studies and the round table discussions and public consultations, all of which have recommended over and over again that adults should have equal right of access to their own birth information regardless of whether or not they happen to be adopted.

Seven years ago when we came before a standing committee there was some concern expressed about whether the volunteer network was prepared to meet the demand for information and support, should disclosure laws be changed. Of course, a major effect of implementing Bill 77 would be to give people access to information which is in effect as old as they are. They would need to know how to interpret this information, what they could do with it. The question was, is the peer support network ready to handle a huge influx of clients that local CASs might not be adequately funded to service if the law changed?

In 1997, Parent Finders Inc, in partnership with some 40 similar organizations across Ontario and the Adoption Council of Ontario, and with over \$100,000 in funding support from community and social services, produced a search manual for adoptees and birth relatives as part of the Adoption Community Outreach Project, or ACOP. You all have a copy of this manual before you, and I encourage you to take even a few minutes to peruse it and certainly to share it with any friends or relatives who may be members of the adoption community. I would like to remind you that one in five Ontarians is directly affected by adoption, whether they are aware of their status or not.

This resource, which was produced at taxpayers' expense, is a virtual map to the search-and-reunion process, providing both practical and philosophical advice to those who seek reunion with family from whom they have been separated by adoption. The search manual is the culmination of immeasurable years of experience of members of the adoption community who have searched and been reunited. It has been used by countless people to provide them with instruction on how to find and contact their birth relatives in a discreet, respectful and non-intrusive manner. Last year, a reprinting was necessitated due to overwhelming demand for copies, and this resource continues to be available province-wide through the volunteer network and branches of the Ontario Genealogical Society. The peer network is more than prepared to help people use their birth information wisely and for the benefit of all concerned. We have fulfilled our part of the bargain, but we're still waiting for the government to hold up its side of the deal by enacting new legislation.

Seven years ago, representatives of both the Ministry of Community and Social Services and the Ministry of Consumer and Commercial Relations came before the standing committee on social development, as I hope they will have an opportunity to present to this committee, and outlined in detail precisely how straightforward it would be for them to release original birth

information to individuals upon request. Unarguably, technological developments in the interim have made this task even easier than it would have been then. The registrar general's office is in the midst of instituting sweeping changes to the way in which citizens apply for and obtain their birth certificates in this province. The timing for including changes to recognize the rights of adult adoptees couldn't be better.

It bears repeating here that regardless of what laws, policies and practices may be, people have been taking matters into their own hands and have been searching and finding each other for decades. The basic human right to know one's own birth information exists. All that remains is to acquire legal recognition of this fact.

I wasn't going to bring my personal story into this, but I think I would like to tell you that I found my birth mother 22 years ago. In fact, on October 31 it was 21 years, and I had then known her longer than I did not know her. I don't need this law either. I'm in this for the people who come after me to this realization that they have a need to know or a right to know.

There has been a certain amount said about adoption disclosure and the Freedom of Information and Protection of Privacy Act. Adoption disclosure is in fact exempt from the Freedom of Information and Protection of Privacy Act. Otherwise, adopted people would be able to access their own birth records, just the way everybody else has right of access to any government record pertaining to themselves: birth records, school records, drivers' records, you name it. You should consider this first if you take into account anything the freedom of information commissioner may have to say about Bill 77.

There are 11 provincial acts in Ontario where FIPPA exceptions apply. These include the Commodity Futures Act, the Crown Employees Collective Bargaining Act, the Pay Equity Act and the Securities Act. Those exemptions are in place specifically to protect investigations of various commissions or matters of national security. For instance, disclosure may be refused "where the disclosure could reasonably be expected to prejudice the defence of Canada ... or be injurious to the detection, prevention or suppression of espionage, sabotage or terrorism." I don't think that's what we're talking about here.

It's revealing to look at the other acts where FIPPA does not apply, and particularly at those sections of CFSA dealing with things other than adoption that are excluded from FIPPA. There are six sections of CFSA where FIPPA exemptions are in place. But apart from adoption disclosure, nowhere are adults barred from access to their own personal information. In every other instance, besides adoption disclosure, the child, who is the primary client, is allowed access to his or her own record at the age of 12 unless the court determines that undue emotional harm might result. Even then, nothing precludes that person from going back and getting his record once he has attained the age of majority. It is only in those sections of CFSA, the Vital Statistics Act and the Courts of Justice Act that apply to adoption where there

is complete dismissal of a citizen's right to information or documents held by a government body which pertain to him or her.

Adoption disclosure is exempt from FIPPA, but it is imperative to remember that the current disclosure law would become largely redundant if FIPPA did not apply here. The FIPPA commissioner's comments, concerns or opinions are therefore immaterial, and the provisions of Bill 77 are urgent and indispensable, unless, of course, this committee considers recommending that those FIPPA exemptions to the acts governing adoption disclosure be rescinded.

**1650**

As I explained in the last round of these hearings, any promise of confidentiality to birth or adoptive parents was not a covenant of anonymity. Certainly both birth and adoptive parents have a right to have their confidentiality protected from public inquiry. Indeed, this was the spirit and intent of the law that sealed birth and adoption records some 70 years ago. But confidentiality is very different from the concept of perpetual anonymity from the person who is adopted. If this was not the case, birth names could never have appeared on adoption orders, as they do. The law provides a necessary and effective shield from public scrutiny, and Bill 77 would not change this. Enforced anonymity is a later development in social work practice and is a derangement of the intent of a law which was enacted, and persists, allegedly "in the best interests of the child."

There is some potential for amendments to the bill currently under consideration by this committee. You might decide to recommend Bill 77 the way it stands or radically alter it. But the critical aspect of any new adoption disclosure legislation is that adopted persons must have the same right of access to their own original birth information as do non-adopted persons. The current disclosure law is clearly discriminatory and violates both the national Charter of Rights and Freedoms and several UN conventions.

As MPPs, you should all be aware that most of this is not general public knowledge, in part because adoption, as the media generally present it, and therefore in the public mind, is often seen as a soft "family" issue rather than the solid human rights issue that it actually is.

When people are told about these discriminations, at first they are quite disbelieving. They say, "This could not be true in Ontario," and then they become indignant and say, "This should not be true in Ontario." We find that well-informed people, and even people who are affected by adoption and disclosure, honestly think that these matters have long since been resolved. They think the adoption disclosure registry is a place where adoptees can go and look up their own birth information. You have to understand that that is what the public thinks. That is what in many cases your constituents believe.

The idea that there is a big black book downtown someplace where you can go and look this stuff up is not just a naive idea. This is how adoption disclosure has operated in Great Britain since 1975. Our system should

have followed suit then, and should certainly do so now, more than a quarter of a century later.

You may know that there is a case currently before the Ontario Court wherein an adult adoptee is suing the Toronto Children's Aid Society for their failure to disclose to her medical information that would have spared her and her three natural children pain and suffering. I think you're going to be hearing from somebody from OACAS and also from the children's aid society. In that instance, the agency in turn is suing the applicant's birth mother. Obviously, the official helper believes that somebody has to be held accountable for the fact that adoptees should, but don't, have unrestricted access to their own information like everyone else does.

We would like to close by reminding you that it was a Conservative government that led the way in beginning the reform of North American adoption disclosure law right here in Ontario more than two decades ago. Our government showed a great deal of insight and leadership on this issue in the 1970s, and this is precisely the kind of responsible leadership that we are trusting our elected representatives to show now.

**The Chair:** C'est tout ? Thank you very much. That affords us about six minutes, so two minutes per caucus. This time we will start with the government.

**Mr Miller:** I'm interested in the no-contact rule and how it has worked in other jurisdictions, if you're familiar with that. I believe you said that the current rule has been in place in British Columbia—for how long?

**Ms Kramer:** Since November 6, 1996.

**Mr Miller:** Roughly 2.5% of the people don't want any contact made with them. Are there many cases, or any that you're aware of, of people breaking the no-contact wishes?

**Ms Kramer:** None that we're aware of.

**Mr Brian Macdonald:** I was speaking with their registrar. Their disclosure registry and the vital stats people have slightly different figures, but basically they were unaware of any real problem with people breaking the veto. They gave me the numbers per year of people lodging vetoes. Even then their figures are a bit difficult to interpret because there's a number of applicants who were listed as vetoes when they started but who were upgraded to veto status from simply saying, "No, I do not want contact at the minute," from earlier activity in their register. There are 2,700 or so vetoes on their system already—and when they started in 1996—that may not be vetoes but may be simply upgraded "I don't want contact right now," requests. So their numbers might be even lower than 2%, but as far as the person I was talking to knew, there hadn't been breaches.

When we did the numbers in 1994 for other jurisdictions, we found that the numbers of breaches were extremely low. We anticipated that, with the legislation as it stood then, we might expect three or four breaches for the whole population of Ontario, the 220,000 or so adoptions. As has been mentioned, as a population we are very inclined to respect something like an information veto or a contact notice, because adoptees specifically are

very sensitive to what we call second rejection. The idea of going ahead and doing this at all takes great courage. The whole business of going and meeting a blood relative when you have never met one before is quite daunting. I think the problem of people breaching these notices will be nonexistent.

**Mr Colle:** In terms of the attempts by children to find their birth mothers, with the use of the Internet has it become easier to get information? Has that been helpful, or has it made any appreciable difference?

**Ms Kramer:** First, let me correct you. We're not children; we're adults. We haven't got children out looking for their birth parents. We have adult adoptees doing it.

**Mr Colle:** We're always children; my mother tells us that.

**Ms Churley:** Speak for yourself, Mike.

**Ms Kramer:** We're only children in the eyes of the law, unfortunately, and we're trying to change that.

Yes, the Internet is the same way that you do research. In the olden days you had to call every area code, long distance directory assistance, to look for listings. Now you simply go on to Canada 411 and do it. There are Internet-based search registries where people can match up if the birth parent and the adoptee both register. Then there would be a match made through the volunteer peer network.

**Mr Colle:** Has it made an appreciable difference or not, do you think?

**Ms Kramer:** I believe it has, yes. It's made things happen perhaps a little bit more quickly in some instances. Most of the Parent Finder and related organizations have search and support meetings once a month and maybe have some telephone contact with their membership in between. So all of that stuff on the Internet has made it so that you can do this every evening for a week in your own home, and there's much more contact on, say, things like the CANADopt registry or the Canadian Adoptees Registry Inc, CARL, out of Barrie, Ontario.

**Ms Churley:** I'd like you to meet Holly Kramer, the woman who found my son. Welcome.

I think that last question hit upon an interesting subject, because my bill has a no-contact veto, but I refuse to put in a no-information veto. I know that BC did that and they're about to, in fact, amend the bill, which is a good thing. Most of the bills do not have that. There might be some move afoot to do that. I just think, fundamentally, that adult adoptees have the right to that information. I'd like your comment.

One other thing about the question that was just asked, more and more people are finding each other anyway, and the interesting thing about this bill is that it's got a no-contact veto. Under this system, an open system, the birth mother, about whom people are so concerned, would actually have the ability to register that no contact. Because of the weird system we have now, which doesn't work, they can't do that.

**Ms Kramer:** That's right. As Brian was mentioning, it certainly is true that most people would like to know

going in whether there is some trepidation on the other person's part. We don't go trampling on people's toes.

In British Columbia, where they had the vetoes, the first thing that happened the day after that legislation was passed was they discovered that it was unconstitutional, and they've been fighting about it out there ever since. So why would we want to make the same mistake here?

**Ms Churley:** You mean the information veto.

**Ms Kramer:** That's right. I don't know why we would want to go through that exercise of putting something like that in only to have it challenged and to have to take it back out.

**The Chair:** Thank you for taking the time to come before us here today.

1700

### LESLIE WAGNER

**The Chair:** Our next presenter will be Leslie Wagner. Good afternoon and welcome to the committee. I just remind you that we have 10 minutes for your presentation.

**Ms Leslie Wagner:** My name is Leslie Wagner. I'm a mother who lost a son to adoption in 1983. I actually brought the last picture I have of myself and my son together, because I think a picture says a thousand words, as the cliché goes. I'm very nervous, so please bear with me. This is very difficult to do.

I'm here today not only to support open records but because there are many myths and secrecy within the adoption community which need to be addressed and verbalized by those of us who are directly affected.

The first myth I would like to dispel is that this was my choice. Being 17 when my son was born, I knew nothing about adoption. It was presented to me by the doctors and social workers who emerged into my life. I know for some girls their parents made the decision for them. It was explained to me that in the best interests of my son he be placed in a financially secure home where he could reap all the material benefits I would apparently not be able to provide for him, even though I was still in a relationship with my son's father. I was told that keeping him would be selfish and that he deserved to have more. I was led to believe that adoption was the only option which would benefit my son.

I now know that financial struggles are temporary and adoption is permanent. Had I been told the truth about the effects of adoption, my son would never have left my side. It's taken me years to forgive my naive 17-year-old self for believing I wasn't good enough for my son, as the professionals insisted.

Myth number two is that all children placed for adoption are unwanted, abandoned or abused. This absolutely false notion I find appalling every time I hear it. I loved my son 19 years ago and my love for him has only grown over the years. I've met many hundreds of natural or birth mothers, as we're called, in the last six years and every one of them loved their babies and wanted to keep them. Our children were taken from us

because we were young and unmarried. Guilt and shame were the tools used to have us surrender our parental rights under the guise of being virtuous, doing the best thing for the baby. Not only were we supposedly providing our children with a better life, we were giving an infertile couple the gift of a child. Yet the media, and society as a whole, has classified us as child abusers, prostitutes, drug addicts and, most recently, stalkers. I refuse to be condemned by these outrageous lies and huge misconceptions of who a natural mother is.

My son deserves to know the truth about the circumstances of his adoption, and I am the only one with that information. Guessing or being misinformed about his adoption can cause him further undue emotional trauma.

My crime was having a child at a young age and not being married. For that I have been judged unjustly and punished with unimaginable grief. I have suffered enough and need to know what happened to my baby.

To justify the separation of a mother and a child, it's assumed that there is something deviant with the natural mother, and there the first lie is born: making it appear that the child is being rescued from an undesirable situation by people who are more deserving of a child, based solely on clout.

Natural parents' pain has been grossly ignored for far too long.

Our children carry the burden of compounded lies. Their identity is stripped from them and they have the false pretext that they were discarded by their natural parents, which can lead to abandonment and self-esteem issues as well as resentment. Any adoptee who wants to know their origins should not be denied. They never had a voice in their adoption and now they are prevented from finding their heritage. As Canadians, we should be ashamed of this blatant disregard for human rights.

The third myth pertains to confidentiality. Birth parents never sought confidentiality nor were we promised it. I have my consent form with me. Nothing on there says that. It's an archaic notion built on shame and has no place in the 21st century. In fact, it's quite the opposite.

I was told that a reunion with my son would be inevitable and that he would search for me when he was around 16, with his adoptive parents' encouragement and understanding. I was also told that his first name, the name that I had given him, was going to be kept. It was devastating to discover years later that both statements were false. Why had my caseworker voluntarily given me this information without any premise? It was clear I had been misled.

I began my search for the truth six years ago, and it was only last month that I met with the director of the agency which handled my son's adoption, only after he was certain I wasn't seeking litigation. I found this curious, because if everything was done legally, why was he so worried? I believe this is one of the main reasons facilitators are afraid, because they know there are gaping holes in the past procedures, and that is an understatement. There are currently agencies in litigation for withholding critical medical information. Over the next

year, you will see unprecedented cases come forward to challenge the closed system.

Today, concealed adoptions are virtually non-existent, which is why this bill must be applied retroactively to include all of us affected by past procedures. I deserve to know what became of my son. It's cruel and inhumane to forbid me that knowledge.

Getting back to my meeting with the director, as he skirted nervously through my file, he discovered a letter from my son's adoptive mother which was meant for me. It was dated December 1983. He couldn't tell me why it was never forwarded to me. He also didn't know if my son had ever received the letter I had written to him years ago. Both these letters were sent out of love. By opening the records, you allow us to receive that love, not have it forgotten in a filing cabinet or left to the discretion of a facilitator. It's an atrocity to keep our records closed.

Bill 77 will enable us to finally find out what has become of our lost loved ones and let us decide how we want to reunite with each other. Facilitators or the government have no right to keep us apart or deny any information meant for us to have. It's urgent that we be allowed to heal, physically and emotionally.

We have the veto in the bill for those who choose privacy. The onus should be on the natural parent to declare their desire not to be contacted, as they would be the one seeking to conceal a factual truth. The majority of us should not be held captive by their choice; we should also be permitted to choose.

Experiences where open records have become law demonstrate an overwhelming majority of natural parents welcoming the opportunity to share information. My son's natural father and I wish to put him in our wills. If we don't know his name, how can we do this? Perhaps we will have to create a law which will ensure that our last wishes are met.

Keeping the records closed forbids us from coming to a resolution. I don't know where my son is. I love him and I miss him. You have the power to help me find him and to help him find himself. There are only two ways to approach this matter, either from fear or from love. I choose love. Which will you choose? Please vote yes.

**The Chair:** Thank you very much, Ms Wagner. We appreciate your coming before us and telling us obviously a very poignant story. We really don't have time to get into questions with barely a minute left, but thank you on behalf of the committee.

1710

#### TERRY GARDINER

**The Chair:** Our next presentation will be from Terry Gardiner.

**Mr Terry Gardiner:** Good afternoon. I am Terry Gardiner and I'm an adoptee. I am here today because my life has been indelibly affected by closed-records policies in Canada.

I was born in Montreal, so my struggle relates specifically to Quebec's laws. However, this issue of closed

records gives rise to the same problems across Canada. As a resident of Ontario, I urge you to vote yes on Bill 77.

I began my search for my birth family upon turning 18—a legal adult, or so I thought. When social services were unable to locate my birth mother or even find evidence that she was alive, I requested a search for my birth father. It took 11 years of fighting, begging and finally the threat of legal action to convince them to look. It seems that in protecting her confidentiality, they couldn't look for him, because he had no right unless she gave him the permission to have any right. It took them just two weeks to find him. Finally in contact, the web of lies which for 29 years had kept us separated by closed-records policies began to crumble.

My birth father, Russell West, who now lives in Ottawa, cried during our first conversation. He welcomed me into the family. He wept tears of joy at my arrival and tears of sadness and grief over the almost three decades we had been separated. I was to learn that he had never been informed of my existence. The closed-records policies allowed for me to be made a crown ward, put in foster care and then sent to be adopted in a Third World country at six months of age, all without his consent and without him having any knowledge that he had become a father.

My case is an excellent example of the abuse that can occur when records are closed. The closed laws allowed him to be excluded from the relinquishment process and ensured he would never have a way of discovering my existence. As a result, even though I was born in Canada to Canadian parents, it was decided "in my best interests" to send me from a First World country to a tiny Third World nation. My situation is only one legacy of the closed system: however, systemic problems under such policies are inevitable outcomes.

If passed, Bill 77 will surely bring about more openness and accountability to the process of adoption in Ontario. I fought for 11 years for information which was my birthright. Bill 77 will ensure that future generations of adoptees will not have to invest this huge chunk of their lives in a process which no other Canadian has to endure. My adoption was a contract in which my interests were decided by others because I was a child. I am no longer a child and should have the freedom of choice which every other adult Canadian enjoys, especially in matters which go to the very core of who I am as an individual and as a human being.

At 20, I discovered that I was not the black West Indian I had been raised to believe I was, but in fact a Canadian with a bi-racial heritage. My birth mother is white and my birth father is black. This may mean nothing to people who have never had to consider the connotation of the colour of their skin, but it forced me to undertake a complete re-evaluation of my self-image and my racial identity.

Every other citizen is entitled to the truth about their birth. We adoptees have a legal fiction, an amended birth certificate, not because we have been convicted of some

awful crime or because we have been judged mentally incompetent; no, simply because we are adopted. Disclosure has nothing to do with birth parent confidentiality, as we would be led to believe, but rather is determined by whether or not the child is eventually adopted. There are many children who are relinquished by birth parents but never adopted who grow up in the foster care system. These people have full access to all identifying birth information. What about their birth parents' confidentiality? This demonstrates that sealed records are intended for the benefit of the adopted child, not for the benefit of the birth parent, and so the adult adoptee should be free to obtain that information.

This discriminatory policy of state-imposed and enforced secrecy makes me and every other adoptee, not just in Ontario but in Canada, second-class citizens. I am not "less than." No other adoptee in Canada, or at least in Ontario, is "less than." I urge you to vote for Bill 77 and recognize our rights. I hope that in 2002 and 2003, we will no longer be considered "less than."

As has been said before, the principles embodied in this bill have come before the Ontario Legislature in one form or another several times since the mid-1970s. Since that first proposal, adoption records have been opened in Great Britain, New Zealand, a couple of the United States, and right here in Newfoundland and British Columbia. Where it has been implemented, openness has been an overwhelming success. Predictions from some quarters to the contrary have proven baseless. That 2.5% number sticks in my head. As a representative of 97.5% of the population, should I be punished for the desires and the needs of 2.5%?

Finally, current disclosure policies have proven unsatisfactory. This legislation must be applied immediately and for all. Anything less will punish those adopted during the past 50 years for a decision in which we had no voice, we had no choice.

I see this as a weighing of interests: the interests of the birth parent and the interests of the adoptee. I'm the adoptee. I had no voice in that original decision. I didn't ask for my birth certificate to be sealed. I didn't ask for my entire cultural and biological heritage to be erased, gone; that's it. Where is the balance, gentlemen and ladies?

I thank you for considering this bill, but especially I must thank you, Ms Churley, for bringing forward this bill. For my entire life it has been clear to me that my rights and my needs are not considered and have not been considered. Thank you for making me feel that finally at least we are considered.

**The Chair:** Thank you very much. That leaves us about three minutes. This time, to be fair, since I'm going to give all the time to one party, I'll go to Ms Churley.

**Ms Churley:** Thank you very much for your presentation.

I wanted to ask you if you have an opinion on an issue that seems to come to the forefront all the time for those who have concerns about the bill. You referred to it briefly, and that is concern about the few birth mothers

who don't want to be found. Then there is the issue of the adoptive parents, which hasn't come up a lot yet but probably will. I don't know if you want to speak personally about that, but they are sticking points with this bill, from what I've heard from other parties who have some problems. Those are the areas we need to address to convince people that other jurisdictions show there haven't been problems. What about the adoptive parents in this triangle?

**Mr Gardiner:** First I think I will talk about the birth parents. I like to say "birth parents" because everybody says "birth mother." Birth mothers don't go out and have children by themselves. Contrary to what the laws would have us believe, there is a father. In my case, my father was excluded from this process all the way down the line by the closed system. Social services had his name, they had his address, they had his contact information. At no point did they ever say, "Hey, by the way, you've got a son. What do you want us to do?" They simply excluded him from the process and, because it was closed, there was no way he would ever find out. That has to be changed.

As far as my birth mother goes, I know where she is and I know who she is. I have chosen not to interfere with her life, because my birth mother has made it very clear—not to me—that she does not wish contact, not from me, but from her entire family. After I was born, my birth mother severed all ties with her mother, her sister, with her three brothers and with her father. So I'm in contact with them because they want to have contact with me. She's not in contact with them. Even though I know where she is, I respect that if she doesn't want contact with them, she probably doesn't want contact with me. I don't know, but I'm respecting her rights.

As far as my adoptive parents go, they are both very much in support not necessarily of open records in that you can go see my file or you can go see my file, but that I can see my file, because this is information about me. The birth certificate has my name on it and my parents' names on it. A social worker can see it, a judge can see it, but I can't see it. This is not applicable to any other person in Canada. What did I do? Why do I deserve to be second-class and be deprived and be denied? I did absolutely nothing. I was adopted. That's not something that I had a choice about or was even a party to.

**The Chair:** Thank you very much for coming before us here today. We appreciate it.

1720

KARIANN FORD

**The Chair:** Our next presentation will be from Kariann Ford. Good afternoon and welcome to the committee.

**Mrs Kariann Ford:** Good evening, ladies and gentleman. My name is Kariann Ford and I am an adoptee. I feel it unfortunate that I have to be here today, but during the past three years I have discovered some disturbing anomalies in current practices concerning how

vital medical information is being conveyed to adoptees. The adoption agencies are neglecting to pass on information given by birth mothers who are trying to help their adopted children. Life-saving information is being withheld from these adoptees. This information is being withheld by the very organizations that have been put in place to help and assist.

I would now like to tell you the story of my three children and myself.

In 1996, I was diagnosed with PKD, polycystic kidney disease. This is a life-threatening disease. It had taken doctors 11 years to reach this diagnosis. It is not a common disease. During the years in which I was ill and no one seemed to know why, I had suffered with so much abdominal pain that the doctors had performed six abdominal surgeries on me to try and give me some pain relief. If they had known what was wrong with me, most of these surgeries could have been avoided.

I now deal with this disease on a daily basis. Nothing could have prevented me from getting it, so I deal with it. I have to take strong painkillers every day. I have frequent debilitating kidney infections that necessitate intravenous medications to control them. My future outlook will probably include the need for dialysis and a kidney transplant.

In 1998, all three of my children—Bryce, 16, who is here tonight; Matthew, 11; and Kristy, 9—were diagnosed with PKD, and all three are showing some early signs and symptoms of the disease.

After I was diagnosed with PKD, my doctor mentioned that it would be helpful to know my family history with respect to what type of PKD I suffered from, and therefore to what degree the disease might be expected to affect me. This was when I made my first attempt to obtain information from the children's aid society that arranged my adoption. The paperwork at that time either never arrived at CAS or it got mislaid when it got there. I had been told that it could take up to two years to get any information back, but I never received anything.

By early 1998, my condition had continued to deteriorate. I again tried to get some family information. This time I received a telephone call advising me that they were conducting a search for my birth mother. At this time, I asked for a background history. That August, I received that history. It included the information that my biological grandfather had a congenital kidney disease, but there were no further details. In September, I finally met my birth mother. It was only then that I discovered that my biological family had an extensive history of PKD. A large number of the family had already died due to the PKD and its many related problems, such as aneurysms.

My birth mother then told me that as early as 1983, when I was 16, she had given this information to the CAS to be placed in my file. She wanted me to know about this. She wanted this passed on to me so I could readily have knowledge of the risks and dangers that I might have to face in the years to come. CAS never passed this serious medical data on to me. Even when I

received the background history, it was never revealed just how serious the situation was.

In 1983, my birth mother had also requested information regarding me. She had no response to this request for 18 months, and I was never contacted by the CAS to inform me of her inquiries as to my health, and so was denied the opportunity to exchange critical health information with her. I now know that when the CAS placed me for adoption, they knew that my family was afflicted with congenital kidney problems. My birth mother was at a very high risk during her pregnancy. They never told my adoptive parents, not even when they inquired in the 1970s, when I was having so many medical problems. I also now know that a woman with this terrible hereditary disease can pass it on to all her children.

As I have said, my eldest child, Bryce, is now 16. He was born in 1985. I should have known about PKD two years before his birth. Matthew was born in 1990, and Kristy was born in 1992. It would be four more years before a diagnosis would be made for me. I have three children who now have to live with the very real prospect of dialysis, transplant and disability. The implications of this include limited opportunities of getting life or health insurance and a significant decrease in their quality of life at a relatively early age. They will have to make the heart-wrenching decision of whether or not to have children of their own. Bryce is already working his way through this decision, and he's only 16.

I have debated whether or not I should say anything tonight about a lawsuit I have brought against the CAS of Toronto. I don't think I need to elaborate on it, other than to say it is in progress at this time. My children and I have been so badly hurt by what the CAS has done that I felt this was the only way we could get any justice.

If the Legislature does not make changes to open these files, then many other people may choose to seek justice in the same way I have felt compelled to. Unfortunately, I am not alone. Mine is not an isolated case.

Thank you for allowing me to share my story.

**The Chair:** Thank you very much. That allows us about two minutes. This time I will give it to the government, if there are any questions.

**Mr Spina:** I would just like to say thank you, because that's a very different perspective on the issue of disclosure. I appreciate that.

**The Chair:** Thank you very much for taking the time to come before us today.

## BASTARD NATION

**The Chair:** Our next presentation will be from Bastard Nation. Good afternoon and welcome to the committee.

**Ms Natalie Proctor Servant:** Good afternoon, members of the committee. My name is Natalie Proctor Servant. I'm an engineer by training, but I'm here today to speak to you as an adoptee rights activist. I myself am

an adoptee. I'm the eastern Canada regional director for Bastard Nation, the adoptee rights organization.

Bastard Nation was formed in 1996 with one simple goal: to restore the right of adult adoptees to have unconditional access to their own birth information. Although this right is protected throughout much of the rest of the world, it is uncommon for adoptees in North America to have it. We are seeking to bring to North America what is already working well in countries like England, Scotland, South Korea, Argentina and Israel. Our members have successfully supported legislative changes in both Oregon and Alabama, where records were unconditionally opened to adult adoptees last year.

Our members' letters and articles have been widely published in newspapers and magazines across the continent, including *Chatelaine*, the *Edmonton Sun*, the *New York Times* and the *Washington Post*. Our organization has been covered in a number of books, newspapers and magazines.

Since we are an adoptee rights group, our recommendations for Bill 77 only pertain to the sections dealing with adoption disclosure for adult adoptees.

I'm not here to make an appeal to your emotions; I'm here to appeal to your sense of justice. I will explain the one change that needs to be made to Bill 77 for it to completely restore the rights of adult adoptees. I will also refute some of the common myths cited against adoption disclosure.

Bill 77 does restore an adult adoptee's right to their own birth information, but not unconditionally. The one serious objection we have to Bill 77 is what so many of you have been asking about tonight: the no-contact notice that can be placed against the adoptee, with a potential fine for violation. This no-contact notice is a *de facto* restraining order that can be imposed on an adoptee for no other reason than the circumstances of their birth. This doesn't restore adoptees' rights; it allows them to be treated as potential stalkers or abusers without any basis at all in reality.

1730

Whether or not an adult adoptee, who is a private citizen, chooses to make contact with another private citizen is up to them. It is then up to the birth family to welcome or refuse that contact. These people are all adults. We are all capable of handling our own affairs. Contact may be welcome or unwelcome, but mere contact should not be made illegal. Laws already exist in Ontario to protect us against abuse, stalking and harassment.

In 1986, as has been mentioned, Dr Ralph Garber, the dean of the University of Toronto's faculty of social work, was commissioned to study this issue. On the issue of vetoes, Dr Garber stated the following: "Adoptees, as any other group, may have among them some few who would have criminal intentions. The law cannot be prescriptive or presumptive about adult adoptees' behaviour without evidence that they do indeed behave this way in significant numbers. No such evidence exists." Dr Garber felt so strongly about this last part that it was underlined: "No such evidence exists."

Bill 77 is prescriptive and presumptive about the potential criminal behaviour of adoptees. In order to restore our rights, the penalty should be removed.

That being said, we propose an alternative to this no-contact notice and fine. We suggest that a contact preference form could replace the notice. Contact preference forms are in use in Oregon and Alabama. They provide the party filling them out with an opportunity to pass on any updated medical and other information as well as to express why they do not wish contact. Samples of these forms are included in the appendices to my written presentation.

Replacing no-contact notices and the penalties with contact preference forms gives adoptees the unconditional right to access their information and also gives birth families the opportunity to express their opinions about contact. What the adoptee does with this information is their own business. The government should not be getting into the business of regulating relationships between law-abiding citizens. As Dr. Garber also pointed out: "The original birth certificate provides one small set of facts that are incontrovertible and that belong to the adult adoptee as a true record of his past. The adoptee may choose to do nothing more with the information or he may wish to seek additional information. The choice should lie with the adult adoptee, not with the government or others as to what he wishes to do with the barest facts of his life."

My next topic is a common myth that comes up when adoption disclosure is being discussed: that the secrecy provisions of the Adoption Act were enacted to protect the birth mother or birth parents. This is not true. The secrecy provisions were added to the Adoption Act in 1927. The 1927 report of the Superintendent of Neglected and Dependent Children of Ontario, who was Mr J.J. Kelso, explains that the records were sealed to protect the adoptees. In his report, Mr Kelso stated the following: "An important feature of the Adoption Act is that proceedings are regarded as private and confidential, as it is the invariable wish of foster parents that the child should not be handicapped in later life by the fact of adoption being broadcasted. No publicity attaches to the application and the act requires that the papers should be filed away in a sealed envelope and only opened for inspection on the order of the judge or the provincial officer."

Mr Kelso's report clearly shows that the records were sealed to prevent adoptees from the then-serious stigma of illegitimacy. His report also shows that any promises social workers might have made to birth parents that the information would never be revealed are false promises. Ever since the records were sealed in 1927, there has always been the possibility that any particular set of adoption records could be opened. These so-called promises of privacy were also worthless, since the social workers could not promise that the law would never change. Slavery is illegal. Women can vote. The idea of public morality and rights changes over time, and laws

change over time. This change must not be held up simply because some people made unreasonable promises. When a human right is recognized, the law can change retroactively.

Other myths and objections raised about adoption disclosure involve worries on behalf of adoptive parents. Adoptive parents do not have authority over their adult children. Any promises of confidentiality that were made to them are as flawed as those made to birth parents. Some adoptive parents may fear a breakdown in the parent-child relationship, but these are misplaced fears and they should not override a person's right to their information. Rights override worries, invalid promises and fears.

In closing, I've shown that adoption records were closed to protect the adoptee, not to protect birth parents or adoptive parents. I've also shown that any promises of perpetual privacy were unwarranted and unreasonable, both because of the Adoption Act itself and because of the changeable nature of law.

We recommend one main alteration to Bill 77: to remove the fine against the adult adoptee, but this could be replaced with a contact preference form. This change would bring Bill 77 in line with the many countries around the world that have successfully given adult adoptees access to their own birth information, some of them for decades. Again, please consider removing the fine against adult adoptees, and thank you for your time.

**The Chair:** Thank you very much. That leaves us about three minutes per caucus for questions. This time we'll start with Mr Parsons.

**Mr Parsons:** Thank you for your presentation. I'm also an engineer, and I tend to think anecdotally much better than global picture. Whether that's good or bad, I like to think it's good. Twenty-five years ago, when I got involved with the CAS, most of the children who were going out for adoption went through the CAS and were placed with families because the birth mother, for whatever reason, had given them up.

My recent experience has been that many adoptions, particularly for babies, are private. The children who are available for adoption through the CAS are children in need of protection who have been removed from the birth parents. In far too many cases, birth parents have done absolutely horrible things to the children, things you wouldn't believe if I described them. We've had children as young as five who have had regular sexual intercourse with their father. They've become crown wards, and they're placed for adoption.

The legislation, as proposed, would allow that birth father at some time to get the adoption order and—I'm going to use the words—"hunt down" the adoptive family and the child. Not everybody who has a baby is a parent, and there are some parents whom I just—I would love to go into detail to give you examples of some of the families we have worked with.

What would be your suggestion to prevent that sort of individual, who maybe even have had a court conviction,

from ultimately coming into contact? An individual who would do that will not respect a no-contact order.

**Ms Servant:** Fair enough. I'd have to repeat again that Bastard Nation is an adoptees' rights organization. We have no position on birth parent access to information. While I personally agree that that's abhorrent, we have no position on this.

**Mr Parsons:** There are some adoptees out there who would not be well served if their birth parents found them.

**Ms Servant:** Again, I'm sorry; our organization has no position on this.

**Mr Parsons:** OK, thank you.

**Ms Churley:** Of course, I know your position and I appreciate where you're coming from. Fundamentally, I agree with you. From the information we have—we're in a unique position here, as opposed to when this all began in the 1970s. We have other jurisdictions that were brave enough and bold enough to move forward, and we can see now for ourselves how successfully it's working. That's going to make a big difference. We're seeing that most of the legislation previously brought in no-contact and some no-information vetoes.

Interestingly, what you said is that some jurisdictions that are just coming on stream now are even doing what you're suggesting. So in a way we're still catching up in that we're going with no-contact vetoes because that's what we know, that's the experience we know best from other jurisdictions, and it does give those who have concerns around the birth mother and some of these issues some comfort that their concerns are dealt with.

I suppose it's not a specific question, because I understand where you're coming from; you're an adoptees' rights organization. It's more, once again, an explanation of where things are at with this bill.

**Ms Servant:** Can I just respond to that? I would like to say that in 1893 Ontario took a leap forward by bringing in the Children's Protection Act. We were on the leading edge at the beginning of the last century. Other jurisdictions were coming to Ontario and saying, "Tell us about this law. Explain how it works." Somebody's always got to go first. Why do we have to be the ones who follow? Ontario has led in the past. Ontario can lead again.

1740

It is not just in recent years that countries have opened records unconditionally to adult adoptees. We're talking England in 1975; I was three. By now, this should have trickled down to Ontario. England, Scotland, South Korea, Argentina—all these countries, lots of countries in Europe allow adoptees the unconditional right to access their information. Why can't we follow them, instead of trailing behind provinces that haven't decided to go that far? Oregon and Alabama in the last year have given adult adoptees this right. Two other states already do this. This legislation is coming. Why wait?

**The Chair:** Thank you very much.

**Mr Bert Johnson (Perth-Middlesex):** I had a quick question. I just wanted to know how you chose the name

for your group. My contention is—"Nation"; I've no trouble with the other part—I can think of the First Nation and I guess the French are the second and the Aryans and a whole lot—I just wonder if we don't have too many nations.

**Ms Servant:** Rather than being modelled on Aryan nation, I would say it was more modelled on gay rights activists. Our organization came together on the Internet, where a group of like-minded people agreed that something was wrong, that something had to be done and that they would not accept any one adoptee's being denied information or being refused the ability to contact someone simply because they were an adoptee.

**Ms Churley:** And for the record, that's why illegitimate children used to be called, and still are, bastards.

**Mr Johnson:** Oh, I know that. It's the other word I had a problem with.

**Mr Spina:** You brought an interesting form in your presentation, and help me understand this. I see a difference between contact veto and this consent or contact preference form. Do you?

**Ms Servant:** Yes. A contact veto has the force of law; a contact preference form is more like a letter letting the other person know what the feelings are. There's no force of law; there's no threat; there's no fine.

**Mr Spina:** Because I look at this and it seems to fit much more appropriately with the freedom of information and protection of privacy laws as they exist today, because it gives consent in advance rather than an outright opening and then having someone veto it. We appreciate this input.

**Ms Servant:** I hope it helps.

**The Chair:** Thank you very much for coming before us this afternoon.

Our final presentation this afternoon will be from Sherry Hastie. Is Miss Hastie with us here today? Going once, going twice.

**Ms Churley:** I'm sure you are aware there is going to be a vote, so we don't have all the flexibility.

**Ms Churley:** I understand that. I just wanted to say she is down for 5:50; to be fair, technically she has five minutes. I don't know how to deal with that, given—

**The Chair:** My response to that, Ms Churley, is people are told to be in the room 20 minutes before their time.

**Ms Churley:** Oh, are they?

#### DONNA MARIE MARCHAND

**The Chair:** We've had a request from a Miss Donna Marie Marchand to speak. I think the request came in just today. I would be inclined to give six minutes, respecting the fact that the vote should take place at 5:50, if the committee approves. Agreed.

Welcome to the committee. We have six minutes for your presentation, Ms Marchand.

**Ms Donna Marie Marchand:** Thank you very much. I'd like to pass this around. This is a picture of my mother. My mother went to the Catholic children's aid

society for help. She had a job, she had friends to help her find a place to live, she got temporary wardship, and then I disappeared into the private adoption system. I saw her once again. She had two more babies and then committed suicide. The man she married committed suicide.

I have a poem I'm going to read at the end, but one of the things I want to say is that there's a real legal issue here that's not being addressed, this right to privacy versus this right to know. In our legal system, the right to privacy is a negative right. It's a right not to have your life unduly infringed upon by the state without reasonable grounds, so the police can't come to your house without a warrant or without suspicion. That's the right to privacy.

There's no right to privacy between individuals. You have criminal law if there's harassment. What we have when we talk about the right to privacy when we're talking about birth parents is a whole wall of bureaucracy, which is a positive right to privacy that nobody else has. What we should be looking at is the right to privacy. My father knows where he came from; my mother knew where she came from. He has more than privacy; he has secrecy. I have no privacy: 50 people have read my records, and I cannot see them. I'm a 46-year-old lawyer. I was on the waiting list for 17 years.

I asked when I was four years old where I came from, who my real parents were. I was tied to a table, given an enema and told if I was ever to ask again, my adoptive father would kill me. Unbeknownst to me, my adoptive father knew my birth mother. It was supposed to be open. He worked on the railroad. He had no idea what my adoptive mother and grandmother were doing to me.

I saw my adoptive mother go crazy. I found out last February that she was adopted and that made her crazy. She saw the end.

I'm going to end with my poem, *The Handmaid's Baby*:

My name is ... "name withheld"  
 I am 14 months old and I will not grow up  
 I have no roots  
 I am dry  
 Brittle, I crack.  
 I am a balloon  
 I stay full without being closed  
 There is no in or out  
 There are secrets in my soul  
 Someone paint a face on me!  
 I am a razor  
 I cannot touch myself.  
 I have been left on mountaintops  
 I have been left in baskets  
 I have been left in boxes  
 I have been left.  
 Alone, I travel the roads of ancestors I invent and criticize  
 I learn my part as if my life depends on it

The details and wants of others: the blood of my existence

"I" is for "iodine": their wounds not mine.

Seed

Sorrow

I seethe myself with need.

I am the poster child for reproductive choice

Mr Justice Frankenstein's creation

Satan's spawn

My mother's not baby

Someone's dream child

Who am I?

I am a warrior without a heart of my own

I am the unborn

Life is a ghost travelling me.

I speak to you at an emotional level. It was not until I saw a picture of my mother that I realized I was actually born. The whole life experience until I was 42 years old was a bad dream.

For 22 years I went to 17 different therapists. I told them, "I'm adopted. I'm really alone. I'm terrified," and they said, "Tell me about your real family." There was no acknowledgement that having absolutely no blood contact, no mirroring, no reflection, would have a psychological and a spiritual effect on a child.

I currently have a medical illness. My father's on my birth certificate. He first denied knowing my mother. He now admits knowing my mother. The last thing I'm going to do is to do anything to scare that man away. At this point in my life, I have the support systems in place.

We don't need any more laws. I am a constitutional lawyer. Something was done to me that I did not have the capacity to consent to. The result was unknown. That is a human experiment. It is against the law. Thank you very much.

**The Chair:** Thank you, Ms Marchand. I'm glad we had an opportunity to fit you into the agenda here this afternoon.

I'll make one last appeal. Has Ms Sherry Hastie joined us? I don't think I saw anyone come into the room. That being the case, the committee stands recessed until 7 o'clock.

*The committee recessed from 1750 to 1906.*

#### NICKI WEISS

**The Chair:** The next presentation will be from Nicki Weiss. Welcome to the committee.

**Ms Nicki Weiss:** Thank you very much. I gave you all copies of my presentation and I'm just going to read it.

As an adoptive parent, I am in full support of Bill 77. In fact, I think this bill is long overdue. I have two sons, both adopted at birth. When my eldest son, Lee, at four years old asked me if his birth mother was dead, I replied, "No". "Well, then," he said, "why can't see her?" I had no good answer. I wrote letters to his birth mother, Anita, via our lawyer, asking her if she would consider making our relationship more open. When Lee was six

years old, she was ready. I am very grateful for her courage.

When Lee was seven years old, Anita and her husband were pulling out of our driveway after a visit. Lee said, "Wait a minute. I have to get my jacket." "Where are you going?" I asked. "I'm going with her. She's my real mother." Open adoption is not without some confusion and issues. I explained to him that adoption is forever, that this is what Anita chose as best for him and that we are the family he lives with. I explained that while he doesn't live with his grandparents or aunts and uncles either, they are a part of our family and they love him. We have that same relationship with Anita. Lee was able to accept this and the issue was resolved.

This morning I asked Lee, now age 11, what he would like you, the attendees of this hearing, to know. He replied with no hesitation, "I want them to know how important it is for me to have both my families. I love you both. If I didn't know my birth mother, I would think about her all the time. I would worry. I think I might even be frightened. I might wonder about her obsessively, but I hardly ever think about her because I don't have to. I'm glad I know whom I look like. Her parents always tell me every time I see them. I want you to tell the committee that having a relationship with my birth family is not confusing. They are my relatives and I need them in my life for me to be happy. If I wasn't able to know them, I might become crazy." There you have it.

Lee is a well-adjusted, bright, high-functioning, emotionally stable person. His struggles are normal kids' struggles without the added stress of a phantom family. So far, he is a person who is integrating all parts of himself so that he is comfortable in his own skin. I would be surprised if Lee ever became a drain on our mental health system. I believe that our open relationship with his original family positively and profoundly contributes to his positive and confident outlook on the world and helps our family function normally.

Let me back up and tell you how our family got to this place. Before my husband and I adopted, we thought long and hard about the kind of relationship we wanted with the birth family and about the kind of information I thought our kids would want. Common sense told me that information, good, bad or neutral, was preferable to no information and that identifying information, preferably with some sort of communication with the birth family, would make the most sense for us. When I heard about the incredible frustration experienced by adoptees and birth parents, the disrespect shown toward those searching for their original families and the long wait time in trying to get some information through the adoption registry, I was appalled. It made me sad to think that our government might deny or make it difficult for my children to obtain information about themselves that is rightfully theirs. People can deal with what they know, no matter how painful the information. They cannot deal with what they don't know. So my husband and I decided to go the private adoption route in the hope of circumventing the hassles of the adoption registry. Obviously we were successful.

Adoption is a normal and common way to make a family. I am unwilling to buy into the barriers, like the barriers to information or the barriers to access, people put in our way for our own good. These barriers promote adoption as abnormal, as somehow shameful. This in no way describes my outlook. I see adoptive parents and birth parents as family. I do not feel threatened by my children's birth families. I have enormous respect for the difficult and courageous decisions they made. I see my children's birth parents as our in-laws. As in any family, adoptive or not, you don't choose your in-laws, you may or may not like them and you both love the same child. Some families get along with their in-laws; some do not. In the end it really doesn't matter. What does matter is that the children have unimpeded access to information about both families. It does not make sense, because one family in the triad might be nervous about the other's existence, to deny individuals their basic need to know about their origins and the freedom to choose whether or not they want to become involved with each other.

When you look at families today, you often see kids with two, three and four sets of parents: stepfamilies, blended families, half-brothers, half-sisters and so on. These kids have unimpeded access to information just by the mere fact that they were born into their families. Their parents, wherever they might be in that chain, also have access to information and access to each other. All they have to do is ask.

The complexities of these families, while challenging, are normal. Adoptive families belong to this same group of complex, challenging and normal families. We are asking the community and the law to also see it this way. I urge you to amend the law in favour of easy access to information. Thank you.

**The Chair:** Thank you very much. That gives us, recognizing we have two parties represented, two minutes each. We'll start with you, Ms Churley.

**Ms Churley:** Thank you for your presentation. It's nice to hear from an adoptive mom and to have your perspective. Your son's comments are really moving, and I'm glad we had that before us.

When I talked to my son's parents, our first conversation over the telephone was very tearful, and he said something to me I'll never forget. They have three children adopted and they were all told. We were all crying, and he said to me, "You know, we always considered you part of the family, and without you we wouldn't have had Billy. Thank you." We have a great relationship, so it's all good.

**Ms Weiss:** I'm glad to hear that.

**Ms Churley:** I wanted to ask you about that, though. This legislation is more about the past as opposed to the present and the future. You had those options and more and more adoptions are open. Some are arguing that it shouldn't be retroactive. To my view, then, the intent of the bill is lost if it's trying to correct an old wrong.

**Ms Weiss:** What? That the bill should start when?

**Ms Churley:** That it should only act for present adoptions and not be retroactive to deal with all adop-

tions that took place in the days of secrecy, before these open adoptions were an option.

**Ms Weiss:** Right. What do I think about that?

**Ms Churley:** Yes.

**Ms Weiss:** I think it's ridiculous. Why would you deny people access to information, especially when they want it? It makes no sense to me to make that not retroactive. In particular, I think that people who haven't had the opportunity to have open adoptions need the information even more, because they've had a black hole for all these years. That really makes no sense to me.

**Mr Wayne Wettlaufer (Kitchener Centre):** Welcome, Mrs Weiss. There are some people here of my generation. We got married in the 1950s and 1960s, and there was at that time a habit of spouses saying to one another, "Are you a virgin?" Whether or not you were, the answer was yes.

**Mr Ted Chudleigh (Halton):** Especially the guy.

**Mr Wettlaufer:** You can tell me if I'm exaggerating, and that's OK. I can see instances where the male spouse would say, "I don't want to know if I've got any kids running around out there," and the female doesn't want to acknowledge it to him for fear of the damage that can be done to their relationship. Comment?

**Ms Weiss:** I think lying and lack of information are more damaging than the truth. It's like saying, if your marriage is shaky, "Let's ignore our issues. Hopefully, they'll go away and our marriage will get better." From my experience, that doesn't happen. I could understand where people would be reluctant to open up the skeletons of the past, but I'm sure the relationship would be improved by knowing the truth.

**Mr Wettlaufer:** What about those instances like we saw recently in Toronto where the father, who has long remained hidden, suddenly leaves himself wide open to a lawsuit?

**Ms Weiss:** I'm not an expert in these matters and I really am not an informed opinion about the negative aspects of information. My experience and the experience of everybody I have talked to who's involved in adoption—and it's a lot of people—is that birth parents, adoptive parents and adoptees all come down on the side of wanting to know, and that that's a good thing. Even if the information is painful, even if it opens up a can of worms, my experience and everybody's around me would corroborate that the information is positive.

**Mr Wettlaufer:** Thank you.

**The Chair:** Thank you very much, Ms Weiss, for coming before us here today.

#### DIANNE MATHES

**The Chair:** Our next presenter will be Dianne Mathes. Good evening and welcome to the committee.

**Ms Dianne Mathes:** I did bring with me a prepared presentation which I will leave for the committee members, although I'm going to take the liberty, having heard some of the concerns of the committee, to vary a little bit

from the original presentation I wrote. I'll leave it with you at the end of my time.

My name is Dianne Mathes. I'm a reunited adoptee and I'm a therapist in private practice in Toronto which specializes in work in the area of adoption. I've worked in adoption now for about 12 years and have made the decision to become involved in work in adoption both as a result of my own personal reunion and a recognition of some of the issues that many members of the triad were dealing with.

To briefly tell you a little bit about my history, I personally met and reunited with my birth mother 15 years ago and my birth father's family seven years ago. I was raised here in Toronto in a loving and supportive adopted family. My reasons for searching for my birth family had nothing to do with an unhappy adoptive home. They were for medical information, because I had undergone several surgeries which later, with information from my birth father's family, I discovered were both not necessary, and with accurate and clear medical information I was able to resolve the medical problems and return to full health fairly quickly.

While the excellent part of this story was the opportunity to reconnect with my birth family and to learn about who I was in many ways that I had never understood previously, it was a difficult and painful journey to have six years of not having medical information and enduring both poor health and surgeries that were not necessary.

As a professional therapist with now 11 years of experience in working in this field, I came to the work as a trauma therapist and had been doing that work for 10 years previously. It was at the point I began to become professionally interested in this work that I began to understand the ways and the seriousness of the impacts of closed records and the closed adoption system.

I receive referrals from many people across the greater Metropolitan Toronto area as well as from Ontario, across Canada and throughout the United States. I work with all parties in adoption. I'm often given referrals by the adoption disclosure registry for individuals who have been denied contact, who are reluctant or scared to provide information or have contact and for families where the placements have not been voluntary and children have been taken because of abuse, incest or neglect.

I work with many different families and I work with people who come voluntarily into reunion. Over the course of the past 12 years I have worked with over 300 individuals whose lives have been touched by adoption. Not all of those stories have been easy. What is remarkable in all situations is that even people who have had difficult reunions, who have been denied contact, who have had deceased parents before they were able to find them, are glad that they pursued this journey, glad because what we need to recognize in adoption is that the need to know, the need to understand, the need to know what happened to your child or who you are is fundamental to the identity of who we are as people in the world.

One of your committee members, Mr Parsons, mentioned he was most concerned about birth parents returning at some point to connect with children who might have been sexually abused in families. As a therapist, I may be one of few individuals presenting before the committee who works routinely with those people. For obvious reasons, adoptive parents, birth parents and sometimes adopted parents are very fearful in those situations. There are several things, though, that I'd like you to recognize. One is that in situations where children have not been voluntarily placed for adoption, their need to understand the circumstances of their original families to resolve that and to ultimately make peace with that is as large and important as if they had been voluntarily placed.

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The other interesting thing is that working with a survivor of sexual abuse—and I did that for 10 years before I did adoption work—is far easier, although horrific, than working with someone who is suffering from the impacts of adoption. In adoption therapy, when someone comes to me where there has been no information or connection for them, the work is incredibly difficult. I'm asked as a therapist to help someone resolve the loss of a significant connection when there is little recognition of the impacts of that loss and no information about who that person was, be it the child or the mother. I'm asked as a therapist to process the loss and grief this person feels without any concrete way to do this and with often inaccessible grief that has existed for decades and which has frozen as a result.

People who are adopted are asked to develop identities without fundamental mirroring experiences which build the foundation for self-esteem and a healthy concept of self. It's an almost impossible task to try and explain to people who are not adopted how incredibly difficult that is, for the whole concept of being able to look at people in your family and have a sense of who you are is so completely effortless and subtle.

I am asked as a therapist to deal with the ongoing fears of rejection, because there is no information, no way to understand and no way to process what the reasons were for those initial losses. I'm asked to help people resolve fantasies and stories that they have created to explain things that they simply did not have information to work with, and yet they have no real information to replace those facts or to develop anything else with. So as I said, horrific as sexual abuse trauma therapy work is, it's far easier to do than to work with people who are dealing without any concrete information or person and dealing with adoption. What is fundamentally missing is that you simply cannot make sense of what you do not know, and the recognition that without core kinship information, there is no way to process either your experience or who you are now in the world.

In the situations that I have encountered where there was reluctance, it was a reluctance to meet, not to share information. Those reluctances were always able to be resolved through respect and co-operation, and the

decision has always been respected by both parties. I have never encountered in 11 years of this work, even in working with families where placements were not voluntary, a family or situation where people broke that co-operation and respect. Initial hesitancy usually came from fear and the kinds of beliefs that arise from the myths, misunderstandings and one-dimensional approaches that adoption reunion and adoption practices have fostered over the years.

Fear is the demon to us in adoption, not openness. Because adoption practice has not historically embraced the importance of birth families, kinship history and connections, birth families have been shut out and fear being intrusive or not important. Adoptive families that do fear intrusion or loss of connectedness have simply not been given opportunities or the kind of information that allow them to understand the importance of kinship connection and information for the child they adopted. In all situations where I have been able to talk with people and overcome some of these myths and lack of understanding, connection has occurred and all people have benefited.

Adoption is about kids and families, and children need to know where they come from, how they became and a way to make sense of their beginnings. They then need to be parented in loving and supportive ways that allow them to grow into all of who they are, because they know they can become all of who they are.

**The Chair:** You timed it perfectly. Thank you very much for coming before us here this evening.

#### PARENT FINDERS OF CANADA

**The Chair:** We've had a request to allow someone to read into the record a submission we have from Parent Finders of Canada out of Vancouver. Unless the committee sees any problem with that, I will indulge it. Mrs Patricia McCarron.

**Mrs Patricia McCarron:** Hello again.

**The Chair:** Hello. Yes, you're back to see us a second time.

**Mrs McCarron:** I'm back again. I've got my other hat on.

**The Chair:** I will allow you to read this one into the record, then.

**Mrs McCarron:** Actually, you don't even need to keep this because this is just a quick summary that got e-mailed to Mr Arnott this evening. Thank you very much, Mr Arnott, for helping us out. There will be a full written one to follow within a day or two.

I am speaking on behalf of Mrs Joan Vanstone. She is the national director and founding member of Parent Finders of Canada. She began this as an adoptee 26 years ago in Vancouver, BC. Since then, over 30 chapters have sprung up across the country, and she has a database of about 58,000 records and birth entries. So she's got a mini ADR going on her own.

The main points I want to go over with you this evening start basically with Parent Finders National

being fully supportive of adult adoptees and birth parents being able to access the identifying information. They do have a right to privacy; however, their privacy can be protected with a contact veto.

Parent Finders National has definitely understood and heard all the arguments over the years about the notion of privacy expectations, but, again, it is a perception that is false. Prior adoption acts did not give birth parents any reasonable expectation of anonymity from their child, much less a vested right to such anonymity, nor did birth parents sign any contract during the adoption process which guaranteed them such a right. For those who believe that such a right exists, we challenge you to produce the statute in any prior adoption act in this country or any contract signed by birth parents that granted this alleged right to anonymity.

I just want to add as well along these lines that you've heard two stories that the adoptees' initial search was for medical reasons, and one for very tragic reasons. Let me give you the other side of the coin, and that is when the adoptee does not know they are adopted, when they have been told they are the birth child. What are they giving out? A false medical history of their adoptive family. We have as many stories on that side when they do finally find out. Usually at the death of their adoptive parents, they will find adoption records.

One issue that may be raised at some point here is having something on the birth certificate that says "amended." This is what they do in England. So my birth record, my birth certificate, would just say "amended," and when I went to get it on my own at age 18 or whatever, I would then say, "What is this?" It doesn't have to say "adopted" or "illegitimate," or whatever, but it's something to think about. There are a lot of adoptees who don't know they are adopted and they are going on false medical histories.

In some jurisdictions where new adoption acts have been passed which granted adopted persons an unqualified right to retroactively access their birth certificate, the matter has already gone to the courts. Where birth parents have also gone to court to assert their alleged right to privacy, their claim has been rejected by the courts on every occasion.

The next item is the right to access personal records as a human rights issue and not as an adoption issue. I've got three arguments for this. An adopted person's equal right to access their personal information is guaranteed by, first, the Canadian Charter of Rights and Freedoms, sections 7 and 15(1); also, the Ontario Human Rights Code, which prohibits discrimination in public service based on family status; finally, the United Nations Convention on the Rights of the Child, which was endorsed by Ontario in 1991. This international human rights covenant guarantees every child, without discrimination of any kind, including birth or other status, their right to an identity. That is in the United Nations Convention on the Rights of the Child. Although we have endorsed it, we haven't ratified it.

On the issue of an adopted person's right to equality, we would like to draw this committee's attention to the

case of Shirley McKenna. That case started out as a complaint of discrimination against adopted persons and was filed under the Canadian Human Rights Act. The case eventually ended up in the federal Court of Appeal. On the issue of discrimination, the justices were unanimous: "By expressly excluding adopted children from accessing the same rights and privileges as non-adopted children, that section echoes the old laws and the old cases." And this was in bold: "The law across Canada, however, now mandates that adopted children be treated identically to non-adopted."

In conclusion, birth parents have a right to privacy but not to anonymity or confidentiality forever. This right to privacy can be fully protected with a contact veto. Adopted persons have an unqualified right to access their original birth certificate, and this equality right is protected by national, provincial and international human rights legislation.

If you have any questions, I'll try to answer them, but I will be answering on behalf of somebody else.

**The Chair:** I think in that regard it might not be as appropriate. But we did want to give you the opportunity to put the points on the record, and we look forward to the more complete submission coming to us.

**Ms McCarron:** Thank you, and Mrs Vanstone thanks you.

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## FAMILIES IN ADOPTION

**The Chair:** That takes us to our next presentation from Families in Adoption. Good evening and welcome to the committee.

**Ms Patricia Fenton:** Thank you for this opportunity. I will introduce myself. My name is Patricia Fenton. I am the coordinator of Families in Adoption, which is a support group for adoptive and pre-adoptive families here in the Toronto area. I am also a mother of two, one by birth and one by adoption. Our adoption was a private adoption here in Ontario and our daughter whom we adopted is now 18 years old. I am also an approved adoption practitioner who works with adoptive applicants, with families who have adopted as well as birth parents who are considering adoption for their child. Let me tell you about Families in Adoption briefly and then I'll get on to our point.

We are a support group for adoptive and pre-adoptive families that was founded in 1984. Our membership is made up of families, some of whom have adopted locally through private adoption, some through children's aid and some through international adoption. Some are living in open adoption with face-to-face contact with the birth parents of their children, others have an arrangement for the exchange of pictures and letters on a regular basis, and still others have traditional closed adoptions. Our children range in age from infancy to age 22.

We meet every other month to share information, to learn about adoption and to have social events for ourselves as parents and for our children. We're a loosely

structured organization and we now have approximately 30 active families, although over the years since 1984 we've had 225 families that have come and gone at various points during our time. At the most recent meeting, we discussed the features of Bill 77 and wish to provide our support for the bill. We believe that Bill 77 begins to bring legislation in line with today's view and practices in adoption.

As adoptive parents, we often, almost daily, can see how important it is to our children to know about their backgrounds, about who they are, including who their birth parents are. Knowing one's identity is part of feeling human, feeling whole, being normal. We recognize that those of us who were born and raised in our birth families take a lot for granted, and we feel that the current legislation governing adoption in Ontario has the effect of keeping adoptees as children and as second-class citizens.

Bill 77, on the other hand, gives the right to information for the parties involved, allows for access to information and gives people a choice about whether they have face-to-face contact. We support the fact that parties exercising a contact notice under this bill also be asked to provide updated information and the reasons for not wanting contact. We are very respectful and concerned about birth parents and feel that they should be given rights to information. So we support the access to information that is afforded to birth parents under this bill; namely, the amended birth certificate and the adoption order, as we understand it. We have to keep reminding ourselves that we're talking about adults under this bill.

I'd like to make just a few comments as an adoption practitioner and then also some personal comments as an adoptive parent.

We seem to have a huge dichotomy in the adoption system in Ontario. Today's practice in adoption encourages honesty, openness and sharing of information. Some adoptions are fully identified, with adoptive parents and birth parents meeting and sometimes contracting for ongoing contact after placement. There are trends happening also in the public adoption system. Ontario's adoption professionals just recently had a training session on open adoption.

We encourage adoptive families to begin telling the adoption story to their child at an early age and we encourage an open and honest approach to adoption as a way of normalizing a child's adoption status. All this, however, is against a backdrop of a legislative framework that keeps records sealed, supports a secretive approach and keeps parents and children from knowing about each other.

I'm sure you've heard already, and I will urge you to look at other Canadian jurisdictions, for example, British Columbia, where records have been opened. I understand there have been no major, world-shattering events that have occurred because those records have been opened.

If I may use my daughter as an example of an adoptee's curiosity and need to know about their roots,

please allow me. In keeping with the advice that we received as adoptive parents, we started by telling our daughter as a toddler about her adoption. This was actually one of her favourite bedtime stories as a very young child. By age four, and this was to my surprise, she was already asking very simple questions, poignant questions, about her birth mother. "What is her name? What does she look like? Where does she live? Why don't you know those things?" I had none of the answers. Our adoption order has "Baby L" with a number.

She continued to wonder and want to know more about her birth mother. As our daughter moved into middle childhood, at ages seven and eight, she clearly, openly and at times very intensely grieved the loss of her birth mother. As time went along, her grief became mixed with worry about her birth mother. She knew that she would have to wait until she was 18 in order to apply to the registry. Do you remember how slowly time passed when you were a child? For her, it did. She worried that by the time she got to be 18, her mother might have died and it would be too late for her. It was very difficult for me as a parent to see my child at such a young age of seven and eight worrying about such big life questions and experiencing such grief and worry.

We asked the professionals involved with our adoption whether they could help in trying to answer some of these questions. One said an outright no and others were sympathetic but felt unable to help under our current legislation. The doctor, however, was ready to help but he had retired and no longer had access to his files.

To make a long story short, lacking any support, we eventually did our own search and found our daughter's birth mother. We did our homework, and we did not enter into this journey lightly.

Our daughter's birth mother was very receptive and delighted. Our daughter was overjoyed and pleased to know that she had a half-brother, a birth mother and her husband, all of whom are very fond of her. She can know first-hand that her birth mother did not reject her but continues to love her and care about her, even though she could not care for her.

Our daughter was 11 when we made contact and 12 when we actually met her birth mother, her husband and infant son. We continue to have a relationship today, now six years later. As one of our previous speakers said tonight, it's like having another set of in-laws, special people who care about our daughter. Having a reunion, contrary to popular belief, helped our daughter and us, as her adoptive parents, to feel and be closer as a family.

The part that's missing in this bill for me is that there is no provision for adoptive parents like myself with a minor child who wants to apply for information. I would suggest that consideration be given to provisions for this if it is focused, first and foremost, on meeting the child's needs.

Again, as a practitioner, may I underscore that it seems that our adoption system is made up of two different worlds. In modern adoption practice we promote openness and sharing information for the benefit of the

children involved. At the same time, however, we have legislation which is based on an archaic, secretive, paternalistic way of approaching adoption and keeps adults from enjoying the openness and healthy approach to adoption that today's system is trying to engender.

I would recommend that as part of the lead-up and implementation of this bill, there should be support for a public education campaign on adoption to dispel many of the myths and misunderstandings about adoption.

The passage of this bill is long overdue. I urge you to bring adoption in Ontario into the 21st century by ensuring that Bill 77 is passed.

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**The Chair:** That leaves us about 10 minutes for questions. We'll divide it so each caucus can have up to five minutes. We'll start with the government, Mr Miller first and then Mr Wettlaufer.

**Mr Miller:** Thank you very much for coming in today. My own personal experience with adoption is that my sister was adopted and actually had some similar experiences to what you were describing in that in her mid-20s she had an interest in knowing who her birth mother was. I don't know by what means she was able to track that down, but I know that her adoptive mother, my mother, assisted her in that process. They eventually did reunite and it was a positive experience. She discovered she had a half-brother as well, so that's the other similarity. It's been basically a positive experience. Actually she has, in the last couple of years, adopted a son herself. That's my personal experience.

In the not voluntary cases, the sexual abuse cases, how do you see protection for those kids?

**Ms Fenton:** I recognize that is a difficult question that we've wrestled with in looking at how to provide the kinds of information that people need and also include the protection, if you will. We need to realize that we're usually talking about a fair lapse of time. I would think, from the time of placement until such time as the application for information takes place. Perhaps things have changed. One needs to look at that.

If there is some reason to believe that this birth parent—I presume the birth mother or father—is still going to be a danger to the child, then I think we need to have some way of noting that either on the file or some way that we can alert people to that. I don't have an exact technique as to how that could be done, but in the same way that we have access to information, or people who are examining the files, could that not be something that could be noted in some way so it could be identified?

**Mr Miller:** How do you feel about the no-contact provision in this bill? Do you think it's satisfactory or a good way of going about it? We had someone else bring a submission for the contact preference form that's completely optional. I guess in the bill there is a no-contact provision and there is a penalty if you violate it.

**Ms Fenton:** I think it is good to distinguish between access to information and the right to be contacted and to protect privacy. I don't know that I agree with someone being penalized and thought to be a criminal because

they want to know about their family. That somehow grates against my sense of how relationships should happen and whether we should be fining someone for wanting to know more about their parents and trying to make contact to see who they are. I'm not fully supportive of that contact notice, but I think it is important to have the protection for those who really want to have that choice.

**Mr Wettlaufer:** Ms Fenton, many of us have experience in this on an individual basis. In my own case, it's a young man who would be 17 or 18 years old now. I recall that when he was very young he wanted to know where he came from, and his mother, who was a totally unsuitable candidate to be an adoptive mother, I will say, indicated to him that he came from a mother who didn't want him. I am sure that was reinforced several times as he was growing up. This young man could have become very rebellious and could even have taken to a life of crime except that he got some support in other areas of his life. He had some major health problems, and had a bill like Ms Churley's been in place at the time, there is no doubt in my mind that we would have known that this young man came from a family where these health problems were congenital.

Having said that, when we are talking about private adoptions—and I've got some concerns here; I know I'm going beyond the scope of your bill, Ms Churley, so please bear with me—how do we ensure that parents are suitable adoptive parents? I should have asked this earlier, but I really would like an answer to that, if I could.

**Ms Fenton:** There may not be time for me to tell you all that's involved in that process, but although private adoption might be seen as a behind-the-scenes, informal arrangement, it's anything but. It's very regulated and there are strict guidelines that we follow that have been set by the Ministry of Community and Social Services. Also, although it's not mandatory, certainly many of us who are now practising in adoption are requiring that prospective adoptive parents undergo some education programs in preparation. There are police clearances, there are medicals, there are letters of reference, there are many supporting documents that are required for the home study process by which adoptive parents are screened. I can show you the big binder that is available for private adoption practitioners and perhaps allay some of your fear about what the current practice is. I can't speak for practices in the past in terms of what may or may not have happened around screening, but I can certainly say with confidence that today's approach has become far more thorough. There are a lot of things that we go through in discussing and preparing for adoption with applicants.

**Mr Wettlaufer:** More thorough for adoptive parents than it is for natural parents.

**Ms Fenton:** Absolutely. You've got that right.

**Ms Churley:** Thank you for your presentation. You've brought up a number of important issues. That question I think is a good question that hadn't been asked

about adoptive parents. Certainly we know from Donna Marchand's experience—and I have a friend whose daughter was adopted into a situation that was terrible—alcoholic parents—and for whatever reason, in that time frame, it wasn't dealt with. That child was on the street at 12. It's a long, involved story. Eventually her birth mother, my friend, located her, only to find out that the thing that was promised for the good of the child, that she was going to be sent to a good adoptive home—in most cases, of course, that is correct, because there is screening, but there have been some terrible situations, which goes to say that none of us is perfect. You have birth mothers who aren't perfect, you have adult adoptees and kids who aren't perfect and sometimes you have adoptive parents who aren't perfect. That's something we have to accept. It's life, and we have to deal with it, just as we do with our regular families.

The second thing I wanted to say is that another young woman who was adopted—and this is also typical—was not told that she was adopted. But, of course, as many children do, they find out, especially in smaller towns, because kids say, "You're adopted." She's known for a number of years, and I've known she's known, but finally for the first time she told me, "Don't tell anybody, but I know I'm adopted." It happened that she lost two babies and her adoptive parents still wouldn't tell her. Subsequently, on her own, she found her birth mother. What she said to me was this: "I love my adoptive parents so much, nothing will change that, and I so much want to tell them about this. It's such a big thing in my life and I can't share it with them."

It just struck me, when people were talking about the lies, the layers of difficulties it causes in families, that sometimes there are those layers and not everybody is aware of it, but it does cause strain and people aren't even aware that the strain is there. So your story about your daughter—and I commend you for not turning away from it but understanding that she needed your support and help. I think that as adoptive parents find out, in fact, it enhances the relationship and strengthens it. That's a very important message to give out to those adoptive parents who are concerned that they're going to lose the love of a child they bonded with at a very young age.

**Ms Fenton:** You're right. One of the big fears of adoptive parents is that they are going to lose their children, but certainly that was far from our experience at 11 and 12.

**Ms Churley:** Mine too.

**Ms Fenton:** With respect to home studies and screening, I think it's important to realize that in the course of a home study—certainly in my practice, I do at least six sessions with families and rely on the reference letters and so on—it's really still a snapshot in time. People change. Things may not turn out as planned in the future, but we go by the best information we can gather at the time and we do the best we can. We do a lot around educating, the importance around being open and honest, talking about adoption and those things.

**The Chair:** Thank you very much for coming before us this evening. It was important to the members of the

committee that we have a somewhat unusual evening sitting in order to accommodate those who found it difficult to appear before us before 6 o'clock. We're glad that everyone who submitted their name before the deadline, and a couple afterwards, have in fact been accommodated.

With that, the committee stands adjourned—

**Ms Churley:** I want to ingratiate myself with the committee here and thank you very much for your support. This is unusual for a committee to sit at night when the House is sitting and we needed a unanimous

motion to do that. I certainly want to thank all the members here for allowing the people who couldn't be here in the day this opportunity.

**The Chair:** Gee, Marilyn, if you want to say things like that, you can interrupt me all the time.

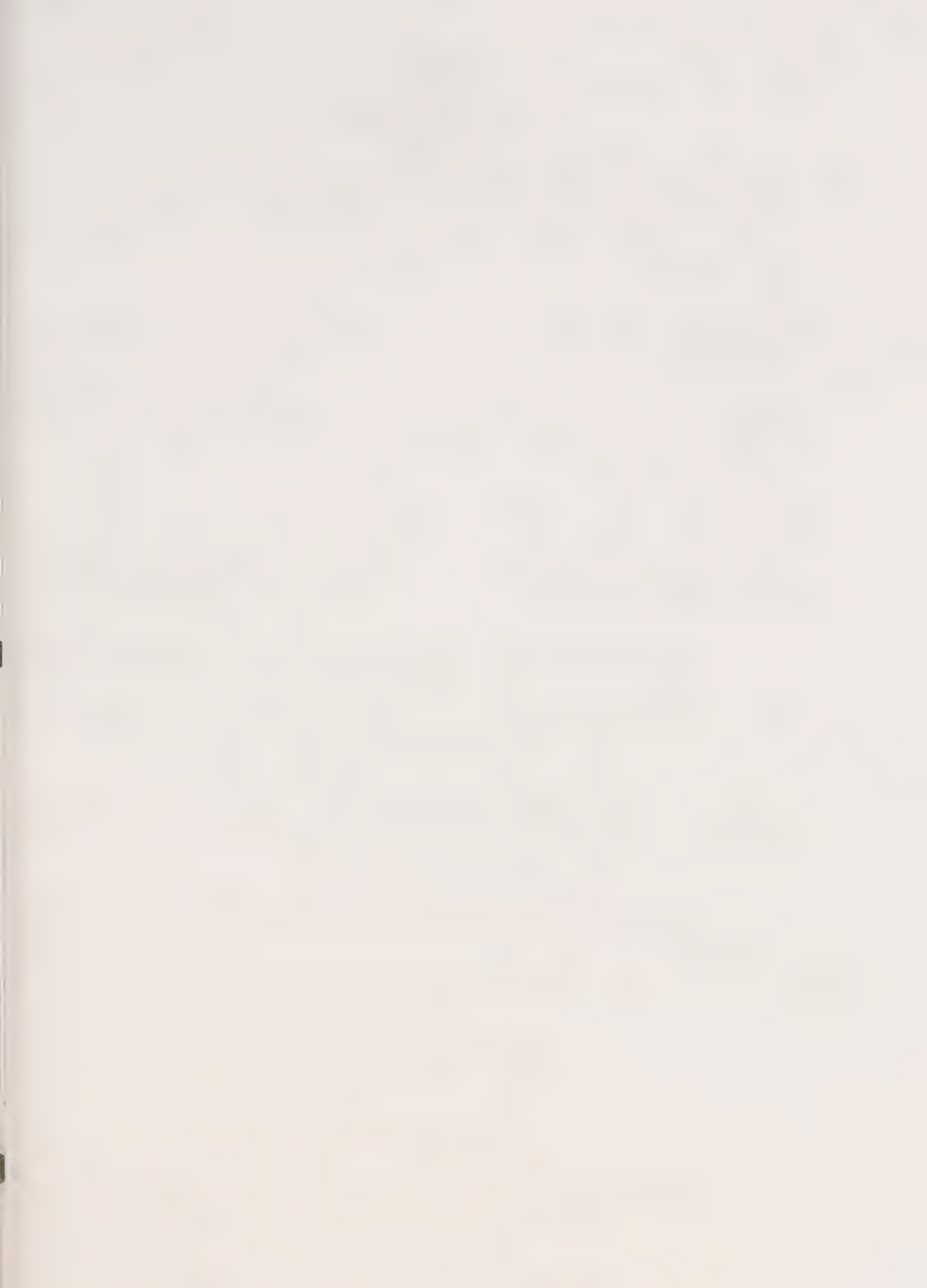
**Mr Wettlaufer:** Ms Churley, does that extend to the Liberals who aren't here?

**The Chair:** Let's not blow it.

With that, the committee stands adjourned until 3:30 on Wednesday.

*The committee adjourned at 1952.*





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C16  
523



Document  
Publié

G-14

G-14

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 7 November 2001

# Journal des débats (Hansard)

Mercredi 7 novembre 2001

## Standing committee on general government

Adoption Disclosure  
Statute Law  
Amendment Act, 2001

## Comité permanent des affaires gouvernementales

Loi de 2001  
modifiant des lois en ce  
qui concerne la divulgation de  
renseignements sur les adoptions



Chair: Steve Gilchrist  
Clerk: Anne Stokes

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 7 November 2001

Mercredi 7 novembre 2001

*The committee met at 1600 in committee room 1.*ADOPTION DISCLOSURE  
STATUTE LAW AMENDMENT ACT, 2001  
LOI DE 2001 MODIFIANT DES LOIS EN CE  
QUI CONCERNE LA DIVULGATION DE  
RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 77, An Act to amend the Vital Statistics Act and the Child and Family Services Act in respect of Adoption Disclosure / Projet de loi 77, Loi modifiant la Loi sur les statistiques de l'état civil et la Loi sur les services à l'enfance et à la famille en ce qui concerne la divulgation de renseignements sur les adoptions.

**The Chair (Mr Steve Gilchrist):** Good afternoon. I'll call the committee to order. My apologies to everyone in attendance. The rules of the House preclude committees sitting while the routine proceedings are taking place in the Legislature, and, of course, we then had a vote.

I have just spoken to Ms Churley, the sponsor of the bill, and recognizing that we are also constrained by a rule that says we cannot sit after the House rises at 6 o'clock, I am going to exercise the Chair's prerogative and say that for the groups, we'll limit it to 15 minutes for each presentation. Hopefully they will be able to make all the points they were going to make. It might limit our opportunity to ask follow-up questions, but that's something the individual members could pursue on their own if they had any outstanding questions. That will give us almost exactly the amount of time we need without cutting anybody off at the tail end of the whole proceeding.

ONTARIO ASSOCIATION OF  
CHILDREN'S AID SOCIETIES

**The Chair:** Our first presentation this afternoon is the Ontario Association of Children's Aid Societies. Good afternoon and welcome to the committee. Please introduce yourselves for the purpose of Hansard.

**Mr Marvin Bernstein:** My name is Marvin Bernstein and I'm director of policy development at the Ontario Association of Children's Aid Societies. My colleague here is Mary Allan from the Children's Aid Society of Toronto. Both of us are acting as co-presenters this afternoon.

Since the presenters have been indicating their background, I should indicate that by profession I'm a lawyer. I spent 20 years as chief counsel to the Catholic Children's Aid Society of Toronto. I've written extensively in the area of child protection and, to a somewhat lesser degree, with respect to adoption matters.

By way of introduction, the OACAS supports the underlying philosophy behind Bill 77. We're of the view that the time is right to bring about greater openness in the adoption disclosure process. From our point of view, it would indeed be unfortunate for this bill to fail to be enacted after all the adoption disclosure bills that have come before the Legislature in recent years. We also hold the view that the bill would be strengthened by our further proposed amendments, which we will talk about during the course of the presentation.

In the public sector adoptions that children's aid societies are involved with, oftentimes we're dealing with the adoption of crown wards after children have been found to be in need of protection under the provisions of the Child and Family Services Act. I think our perspective is a little different in the sense that we're dealing with the public sector and not private adoption, and with the need perhaps to look at no-contact notices to protect certain adult adoptees. We heard the other day about the importance of protecting the privacy rights of birth parents, and that's certainly an important consideration, but also we want to focus on the interests and rights of adult adoptees.

Having said that, we believe we should create an adoption disclosure structure in the province that serves the needs of adult adoptees and birth parents, most of whom are responsible adults, while building in some protections for those adult adoptees who are former crown wards, and perhaps 1% to 2% of those cases where there may be a safety concern as a result of prior abuse or other maltreatment. This is where the no-contact notice may be of assistance to the adult adoptee.

I want to spend some time just going through the recommendations that are being advanced by the OACAS in our submission before I turn it over to Ms Allan. Having reviewed Bill 77 in detail, we respectfully make the following recommendations:

(1) That subject to the further proposed amendments to Bill 77 outlined in our recommendations, the bill should be supported and enacted, as it reflects a positive shift toward openness which will bring Ontario into line

with similar adoption reforms in other provinces in Canada. These positive changes are:

The adult adoptee is to be given unqualified access to his or her original birth registration upon attaining his or her 18th birthday.

The birth parent is given access to the original birth registration of the child he or she placed for adoption, as well as the substituted birth registration and adoption order, subject to the right of the registrar of adoption information to refuse to disclose such information where it "might result in serious physical or emotional harm to any person." That's a provision that already exists in subsection 171(2) of the Child and Family Services Act. So there is a framework to build in some protocols that could exist between children's aid societies and the registrar of adoption information.

In addition, this right of access to this prescribed identifying information cannot be exercised by the birth parent until the adoptee's 19th birthday, in order to provide the adult adoptee with a sufficient grace period in which to decide whether or not to file a no-contact notice.

As I'm going through these elements, these are the elements that the OACAS supports.

Also, adult adoptees and birth parents are entitled to file a no-contact notice which would prohibit any contact with the person who files the notice. This option is available to adult adoptees and birth parents involved in adoptions completed both before and after these amendments come into force. Again, the OACAS supports this legislation having retroactive effect.

Counselling will continue to be made available at different disclosure points to adoptees, adoptive families and birth families, in recognition that adoption is a life-long process, but will not be mandatory. This change makes sense as long as the parties are fully informed as to their entitlement to counselling, as well as to the benefits which can derive from effective and supportive counselling.

(2) That Bill 77 be further amended to require the birth parent or adult adoptee to sign a written undertaking not to violate a no-contact notice before being able to access identifying information. This would provide an additional level of protection in response to the concern that a birth parent or adult adoptee might use the identifying information to force contact on a person who has previously filed a no-contact notice. This additional measure of protection could be advantageous in the area of public sector adoptions of crown wards, where in rare instances the safety of the adult adoptee could be an issue.

(3) That Bill 77 be further amended to increase the maximum penalty of \$5,000 for violating a no-contact notice which is presently contained in the bill. In this regard, we are concerned that this form of maximum sanction would be an insufficient deterrent to those persons who are prepared to risk a monetary fine in order to violate a no-contact notice. For this reason, we favour the British Columbia legislation, which prescribes a maximum penalty of a \$10,000 fine and/or six months in jail. In recommending this amendment, we envision the

court using discretion in sentencing and that a jail term would be reserved for only the most flagrant and persistent forms of violating the no-contact notice, such as where there is evidence of continuing harassment and/or stalking. This again could provide some extra measure of protection that would be helpful in the area of public sector adoptions of crown wards, where in a very small percentage of cases the safety of the adult adoptee could be a concern.

In this regard, we've heard some feedback from British Columbia that would suggest there are very few breaches of the vetoes in that province. Something is working in British Columbia, and it may have something to do with the breadth of the sanctions that are contained in their legislation. So we would ask this committee to consider strengthening some of those sanctions.

(4) That Bill 77 be further amended to require the birth parent to provide all relevant medical and genetic information as outlined in the bill before being entitled to file a no-contact notice. We are concerned with the permissive approach being taken in Bill 77 to the provision of this information and feel that such information is part of the adoptee's birthright and is critical to the adoptee's physical and emotional well-being, as well as to the holistic health of succeeding generations.

1610

(5) That Bill 77 be further amended to permit the renewal of a no-contact notice where it has been previously withdrawn. We are concerned with Bill 77's prescription that any withdrawal of a no-contact notice must continue permanently. It seems to us that there may be justifiable reasons related to changed life circumstances or new information that comes to the attention of the adult adoptee or birth parent—for example, that relates to the violent history of the other person—that may justify the renewal of a no-contact notice. So we would want, for example, an adult adoptee to have the flexibility, based upon new information concerning past family history, to be able to head in a different direction.

(6) That Bill 77 be further amended to change the nomenclature from "no-contact notice" to "contact veto." This is the language that is used in some other jurisdictions and would more clearly describe the nature and effect of the document, once filed.

(7) That the enactment of Bill 77 be preceded by an expansive public education campaign outlining the proposed changes in practice and those locations where people can obtain additional information and support. We're contemplating a time frame somewhere between six and 12 months.

(8) That the enactment of Bill 77 be accompanied by adequate resources for children's aid societies to ensure that the response to those affected can be prompt, comprehensive and professional. This would include sufficient resources to enable adult adoptees to review their social and family history at the offices of the placing children's aid society before deciding whether to exercise a contact veto. These vetoes, in our view, are important decision-making processes and they should be based

upon accurate information related to, for example, an adult adoptee's family history. An agency should be involved in that process, but it means more resources.

Those are the recommendations and position being advanced by the OACAS. I'll now turn it over to Ms Allan.

**Ms Mary Allan:** My name is Mary Allan and I'm a social work supervisor at the Children's Aid Society of Toronto, in the adoption disclosure unit. I've worked in the area of adoption disclosure since 1987 when the Adoption Disclosure Statute Law Amendment Act came into effect. Through the years, I've had the opportunity of assisting adult adoptees and their families and birth family members, including birth mothers, birth fathers, birth siblings and birth grandparents, with the disclosure of adoption information, as well as contact and reunion.

During that time, ideas and philosophies around adoption and adoption disclosure have continued to shift toward viewing openness as a positive influence in the lives of those affected. Our agency in particular has continued to operate within the present legislation to shift philosophies and ideas toward more openness and to convey the idea to the public as well as our prospective adoptive parents that adoption disclosure and reunion is a normal and natural outcome of adoption.

Adult adoptees so often speak of the same needs and feelings that I often think they must have been talking to one another. But, no, the language they choose to describe their experience is universal. At their first contact with our agency they speak of the need to know, to fill the void, the informational vacuum. From our experience in adoption disclosure we know that the typical adult adoptee does not pursue contact with the birth family because of unhappiness with their adoptive family or any kind of individual pathology. Instead, they're seeking answers to very fundamental questions that those of us who are not adopted simply take for granted: Who am I? Who do I look like? Most important, Where do I come from? What is my heritage and that of my offspring?

Many adoptees also talk about never feeling 100% complete and yet not knowing why, of feeling different in the way they look and their personalities, but not really knowing what is lacking. The successful search brings it together and the result is a sense of well-being and completeness. We have learned through our work with adult adoptees and birth family members that contact and reunion has resulted in significant changes in their lives, changes in career choices, improved self-confidence, a renewed closeness with adoptive families and a sense of freedom in having told family members, particularly for birth mothers.

The birth parents we meet tell us about their experiences. Some of them have lost their child because of an inability to parent; others voluntarily because they were young and unable to assume parenting; still others because of family and society pressures to place a child born out of wedlock for adoption. Whatever their predicament at the time, many went on to marry and raise children, some as single parents, and they would often

reflect later in life that placing their child for adoption was a long-term solution to a short-term problem.

Regardless of how they viewed the secrecy and implied confidentiality of the arrangement at the time of the adoption, few would have imagined it would leave them with a loss so profound that many could not get on with the rest of their lives. The child was lost, but not through death, and the grieving process remains unresolved. Feelings of shame and guilt persist through the years for the birth mother and as a result one of her prime concerns is whether her child is angry with her. She needs a lot of reassurance that she did not do a bad thing in placing her child for adoption and that she has the right to information and possible contact.

The birth mother and other birth family members also have questions: Is my child OK? Is my child happy and healthy? Is my child loved by an adoptive family? They have not forgotten their child. They don't wish to disturb the life of the adoptee but they do wish to make sure that they are making their way in the world, and in some cases they wish to be able to take the initiative to establish contact with the adult adoptee.

The success in contact lies in the resolution of these questions. In fact, our approach to counselling for reunion in the most recent years is to begin to use language other than "reunion." The adoptee and the birth family members we are serving are looking for connections, links, kinship, and for adoptees, a footing in the world. Sometimes a friendship develops, but even when the relationship ends up at arm's length or contact ceases altogether, or the whole experience was not as they expected, the feedback we receive is that a great many adoptees and birth parents feel at peace with themselves. They're able to get on with their lives and they would never wish going back to that state of not knowing.

**The Chair:** Could I ask you to make some closing comments, please?

**Ms Allan:** All right. Bill 77 is a positive shift toward openness which supports the view that disclosure of adoption information, both historical and updated, as well as reunion in adulthood, can have tremendous benefits for adoptees and birth family members.

**The Chair:** Excellent. Thank you very much. I appreciate your indulgence and thank you for taking the time to come before us today.

## BIRTHMOTHERS FOR EACH OTHER

**The Chair:** Our next presentation will be from Birth Mothers for Each Other. Good afternoon. Welcome to the committee. You have 15 minutes for your presentation.

**Ms Mary Shields:** I just want to say that it's a great privilege and honour for me to be able to speak to you today. As a birth mother and co-founder of Birthmothers for Each Other, a birth mothers' support group since 1989, this day has been a day I could only dream about.

I am here to tell you, on behalf of hundreds of birth mothers I have come into contact with over the last 13

years or more, that we have never asked for secrecy, we don't want secrecy, and as mothers we want to know that our children are alive and well and if they need us we will be there.

In the past, the Ontario government has taken the position that birth mothers need their protection. We have never been asked if we want it—and we don't. Let us speak up for ourselves.

Open up the adoption records. A contact veto will suffice and will be respected. Look at British Columbia and their adoption reform. That is proof a contact veto is enough. A disclosure veto will only help to continue a perpetuation of the ideology of ownership of the adoptee by adoptive parents. It is a privilege to raise the child they have adopted. That should not come with the right to keep that child from knowing his or her birth family. The ministry must stop treating birth families and adult adoptees as children needing your protection. This behaviour by the Ontario government is harmful to those involved in the adoption triangle.

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The costs in health care for dealing with the depression of adoptees and birth families who seek the healing that results from a reunion must be astronomical. Separation of mother and child at birth has lifelong negative consequences. The best that can happen to those seeking healing is a reunion. Please, don't deny them the basic human right to know their own family.

**Fiscal responsibility:** The present system of adoption disclosure is inadequate, expensive and backward. Thousands of people are registered at the adoption disclosure registry in Ontario, and the numbers are growing. The waiting period for adoptees and birth families can take up to three or four years for information that they need now. This cruel and inhumane treatment of adults looking for some kind of closure has got to stop.

The costs of disseminating disclosure information in the current way are expensive and terribly inefficient. Could we change our focus back to the reason why we are doing this? Protection of privacy? Or is it really secrecy? Why? What are you protecting us from? The truth?

Privacy of adults, be they adoptees or birth families, should be protected once they voice their desire to opt out through the contact veto. Adults are responsible for their own lives and the actions they take within them. We can look to other countries to see that opening the adoption files does not create the havoc the Ontario government seems to be afraid of.

If the Ministry of Community and Social Services could take the dollars they now have and provide a service to only those who want their privacy protected by opting out through use of the contact veto, it would save hundreds of thousands of dollars, and the strain on the adoption disclosure registry would ease considerably.

Bill 77 makes sense. It is a good start toward the betterment of all involved within the adoption triangle. It is good for the people of Ontario. Birth Mothers for Each Other supports Bill 77.

I do have a few more minutes, so I'm going to take them.

Just speaking for myself as a birth mother, I cannot tell you what it was like for me, who had a child at 15 years old, to have no rights, no say, what that was like for me to have to give up my child, and I'm not the only one. I told myself that when she was 18 years old I'd find her, because it's my duty as a mother to know she's OK. Because of the present legislation giving me protection—protection I didn't want—it forced me into a situation where I was so desperate to know if my child was all right that I was forced to go underground and hire a private investigator and see if I could find my child. I went through three years of psychiatry because I needed it. I couldn't get on with my life. People would say, "Oh, well, you know, you mourn your child." She's not dead. How can you mourn someone who's not dead?

I cannot stress how lucky I am to be able to sit here today, because I can speak; I got through my pain. Yes, I did find my daughter and, yes, we're just fine, thank you very much. But she had her own way of suffering too, and it's ridiculous. The present legislation, the way it's been, really legislates a lie. You cannot say this child isn't born to someone else. That's like legislating, "Oh, we'll take a cat and now we'll call him a dog." It doesn't work like that.

I'm really praying and hoping that this Ontario government and the ministry of social services get their act together and just shift this thing. There are too many people suffering, and I've had enough. I can speak for myself, but trust me, there are thousands of birth mothers behind me who can't speak for themselves because they're in too much pain. Do something. Thank you.

**The Chair:** Thank you. We appreciate your presentation here today.

ANNE PATTERSON

**The Chair:** Our next presentation will be from Ms Anne Patterson. Good afternoon and welcome to the committee. Just a reminder that we have 10 minutes for your presentation.

**Ms Anne Patterson:** Mr Chairman, members of provincial Parliament, ladies and gentlemen, good afternoon. My name is Anne Patterson and I am a reunited adult adoptee, a licensed private investigator and a former early childhood educator. I have worked in the adoption community for 11 years. I have served as a volunteer and a professional with search services in pre- and post-reunion support and counselling. It is hard to fit 11 years into such a brief time period, but I will attempt to do just that.

Working with adopted adults and their natural parents for 11 years has been a pleasure. I have found healthy, intelligent human beings and adults who wish to be treated as such. I have also found that openness and honesty is the best way for anyone to start a reunion. I have reunited adopted adults and their natural parents across the country, and I have learned many things.

The services in Ontario with adoption disclosure do not meet the needs of thousands of people. It takes years to obtain information and much of the information is not accurate for so many people. It is full of inaccuracies, errors and omissions. Many have died and cannot register with any registry. Thirty per cent of the adoptees I have helped have found at the end of their search that their parents have died. This is due to inaccuracy of information and cumbersome waiting times. Bill 77 will help those find their loved ones sooner. Bill 77 will afford everyone factual and honest information and hopefully prevent such tragic endings for so many.

In the searches where a natural parent has died, all adoptees I have worked with have been reunited with their surviving families. Many have found much-needed answers, including medical information, as so often the natural parent has died of a genetic disease.

The hundreds of mothers and fathers I have found alive indeed have wanted contact. None of them knew about the registry or any registry. None of them have told me that they signed a confidentiality agreement of any kind. Ninety-nine per cent of those I have contacted have in fact wished to be found; 99% have had a reunion.

In the past 11 years, I have never been in a courtroom to fight over a confidentiality agreement, because that agreement is a myth and does not exist. Instead, I have had the pleasure and honour of seeing those whom I have helped to reunite grow, heal and become more whole. There are usually thank you cards in my mailbox and not subpoenas.

Many of the adoptees I have helped in reunion came to me after the ADR failed to provide effective communication between the two parties. In my experience, all mothers who were recontacted after the ADR alleged they did not want contact had reunion with their children, who, I stress, are now adults. This second outreach was far more effective as it was based on openness and honesty and family members talking to one another.

A system built on secrecy, lies and illusions has not been in the best interests of anyone involved with adoption. Secrecy has deeply affected me. I was not fortunate to have been adopted into an appropriate home. The secrecy of that home caused for me personally the most damage. I myself was abused sexually, physically and emotionally in the adoptive home. Twenty-five per cent of the adoptees I have worked with have also been adopted into inappropriate homes and have also been abused at the hands of those who were considered to be safe. As an abuse survivor and as someone who loves children, I believe that Bill 77 will allow a more open approach that would, in turn, truly protect children. I am hoping that Bill 77 will provide for a system that is based on honesty, respect and common sense and one that includes all children as having rights to safety.

1630

In 11 years, I have reunited 16 mothers who were raped, one being an incest survivor. I know at first hand that secrecy is not healthy, myself having been a survivor of both. Secrecy makes trauma 100 times worse, and re-

union is a way for people to heal from incredible damage. It benefits all people involved.

I also get search requests from adults who have been abused as children and who need answers for their own healing to begin. Amputating people from their families is re-abusive and does not afford anyone a chance to really recover.

For 11 years, I have seen how closed adoption has caused adopted adults and their natural parents grief, depression, identity issues and a web of pain. It has not been protective; it has been highly damaging. The inability to have answers, connections and fundamental human rights has caused irreparable harm. Most of those I know and have worked with have been traumatized to the depths of their souls by a system that has not allowed answers, truth or justice. Bill 77 will do just that: it will give us a right to our own humanity again and enable us to make our own choices as adults.

The adopted adults and natural parents I know have found reunion to be healing, beneficial and highly important to their well-being. Others deserve this chance as well. Of the persons I have helped to reunite, including myself, 100% of them found medical information they were not aware of. The information ranges from allergies to life-threatening diseases that have put and are putting people at severe risk. It is not the diseases themselves that are a danger; it is the lack of information and access to our natural families that is the greatest risk. Closed adoption is a system of Russian roulette, loaded with patriarchal laws invented over 75 years ago.

The worst that I have seen in 11 years are adoptees who are dying as a result of lack of information and others who have fought for their lives. I know many who were saved from premature deaths by reuniting with their families. In many cases, natural parents updated vital information that was not passed on to the adoptive parents or to the adopted adult. Death is a heavy price to pay for government-enforced secrets. Having Bill 77 would be the best way to prevent these types of tragic and needless circumstances, as the government is taking a great risk with health issues with a closed adoption system.

My own reunion has given me a chance to heal from a very unhealthy and very damaging set of circumstances. It has given my parents a relief and comfort to see and know me again. Neither of my parents signed confidentiality agreements and neither of them knew if I was dead or alive for over 20 years. My natural parents loved one another. My natural parents loved and wanted to keep me. Adoption was not their choice. They were trapped by the socially created crime of being young and unmarried. My crime was having the fate of being born to unmarried parents. Society and social services decided that it was right that I not see, be raised by or even know my own parents for over 20 years, and I still recover from the trauma of losing them, as do they for losing me.

The real experts of adoption are those who have lived in the abyss of its pain. I urge you to give others a chance and a right to their lives, to their voices, to their experiences and to their truths. Above all, please give them a

chance to see their loved ones again and to be treated with dignity and respect as adults.

Bill 77 will give them that right: those who are still in search, those who are still waiting for answers a real choice. Bill 77 will help everyone for their emotional health, their psychological health and their medical health. Please support Bill 77. Thank you.

**The Chair:** Ms Patterson, you timed that perfectly. Thank you very much for coming before us here this afternoon.

### COALITION FOR OPEN ADOPTION RECORDS

**The Chair:** Our next presentation will be from the Coalition for Open Adoption Records. Good afternoon and welcome to the committee. Just a reminder that we have 15 minutes for your presentation today.

**Ms Wendy Rowney:** Good afternoon. My name is Wendy Rowney. I speak to you today on behalf of the Coalition for Open Adoption Records. We are a province-wide organization supported by individuals and adoption groups across the province. Members from Sudbury to Sarnia, from Ottawa to Toronto and from the Niagara Peninsula to the Kawartha region resoundingly support Bill 77.

We believe that every adult adoptee has the right to truthful information about his origins, that every birth parent should have the opportunity to learn the name of her child, that birth parents and adoptees who are adults recognize the value of counselling and will seek help should they desire it, and, finally, we believe that adults can decide with whom they wish to begin a relationship, that the contact veto empowers individuals to make decisions about their own lives.

We believe that Bill 77 is about choice. Adult adoptees may choose to learn their original name and identity. Birth parents may choose to learn the name of their adult children. Both adoptees and birth parents may choose to seek counselling to understand themselves better and the changes new information will bring to their lives. Some individuals may choose to use this information to seek a reunion; some may not. For some, simply knowing a name or holding their birth certificate will be enough. For these individuals, Bill 77 provides another choice. They may register a no-contact notice, which protects their privacy without withholding vital information from others. Some individuals will want to know; some will not. Such is the variability of human nature. Bill 77 allows for this variability by providing choice and opportunity.

As an adult, I made the decision to find out more about myself and my adoption. I was lucky. When I applied to the adoption disclosure registry, I discovered that my birth grandmother had registered years earlier in the hope of finding out what had happened to me. After having been contacted by the ADR, she called my birth mother, who was overjoyed to learn that I was alive and happy. I doubt that I can put into words what it meant to

me to receive information about my birth family, to see their pictures, to learn their names. After a lifetime of scanning subway cars for some sense of familiarity and staring into the mirror trying vainly to discern from my own features those of the woman who gave birth to me, I knew where I came from and why I looked the way I did.

Over the past several years I have visited with my birth mother, stepfather and sisters, my grandmothers, uncles and aunts. I have learned who I am and where I fit into the world. This knowledge is my most precious possession. Although my birth mother and I have been unable to build an ongoing relationship, I do not regret my decision to search. The pain of a failed relationship pales beside the profound frustration of not knowing. In no way have these discoveries weakened my relationship with my adoptive mother or brother. I did not seek to replace my family but to develop a more complete sense of self.

Similarly, adoptees across Ontario welcome the idea of open records, not because they wish to find a new family but because they deeply desire to know their origins. I suspect that this desire to know where we come from, to find our place in a long line of ancestors, is not peculiar to adopted persons. You have only to go to the Ontario archives a few blocks from here to find individuals who have spent hours, days and even months digging through old records, studying documents and searching the Internet trying to find links, however tenuous, with their past.

Genealogists proudly publish books and produce family trees to demonstrate where they belong, how they fit into their family, people and society. The overwhelming popularity of the CBC series *Canada: A People's History* demonstrates this same desire to know about our past, to know what makes us unique as Canadians and different from our neighbours to the south.

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This, on a personal level, is what Ontario adoptees want. We want to draw our own individual family trees, to know what makes our people unique and different from all the peoples around us. I myself so longed for the knowledge that, as a teenager, I spent countless hours laboriously copying out the family trees of strangers, marvelling at their connections and convoluted turns. My mother despaired at the reams of paper littering my room but, to me, these pages represented a link with the past, an unacknowledged search for my own hidden ancestry.

The papers hidden from us by the current adoption laws hold the key to that identity. Our own original birth certificates recognize our existence before adoption, recognize that we have ancestors and family trees, recognize that there is a people to which we intrinsically belong by virtue of our own birth and ethnicity. In my experience, many adoptees search not to replace one family with another but to find out who they are. Many speak of wanting to find someone whom they physically resemble. This desire reflects not so much a need for reunion but a deep longing to connect with a group, a

people, an ancestral past which is theirs alone, to have information about how and where they fit into the world.

My personal observations are borne out by academic evidence which demonstrates that it is the information learned from birth relatives, more so than the relationship, which motivates adoptees to claim consistently a high level of satisfaction with the outcome of their reunion. I often come across adoptees who, like me, do not have an ongoing relationship with our birth parents, but who express a deeper sense of self, a stronger sense of identity and higher self-esteem because we have learned of our people, our past and our identities.

When we make the decision to encounter our pasts, we know we may not like what we find. Despite childhood fantasies, we know that the very fact we were surrendered for adoption means there were problems surrounding our birth, conception and perhaps childhood. We know that not all endings are happy. Independently, we decide the need to know is greater than the fear of what we may find. This is an adult decision, made after a great deal of deliberation and soul-searching. It is not something we enter into lightly. As adults, adoptees can and do make decisions every day, even momentous ones which may alter how we see the world and our place in it. Like all adults making life-changing decisions, adopted persons have the ability to make these decisions on their own. We are no longer children, and we do not wish to be treated as such.

I know there is a fear that adoptees will not respect the wishes of some birth parents who do not desire contact. I find this fear difficult to understand. Having spoken with hundreds of adoptees, and being one myself, I know that one characteristic most of us share is fear of rejection, particularly rejection by our birth parents. We, like most people, are not eager to cause hurt to ourselves or to encounter repeated rejection. My own birth father has indicated he does not have a place for me in his life right now. I have respected his decision and not attempted any kind of contact. However, knowing his name helps me to feel grounded and, as I said earlier, part of a collective past.

As you know, legislation similar to Bill 77 has been in place in several jurisdictions for many years, in some cases for decades. There have been no serious breaches of veto anywhere in Canada. No one has ever accused another individual of violating a contact veto. Not a single birth mother fearing the ruin of her life has filed a complaint. Not one putative birth father has accused an adoptee of interfering in his life. Not one adoptee who had been removed from her birth family as a child has filed a complaint against stalking birth parents. Vetoes work. They provide privacy for the small minority who seek it.

Statistics from other jurisdictions demonstrate that few birth parents seek confidentiality. Birth mothers were not promised their identities would be hidden for all time. There is no document that guarantees their secrecy. In most cases, birth mothers surrendered their children reluctantly. They accepted confidentiality as a condition

of the surrender only because they had no other option. In my experience, although birth parents do want privacy and the opportunity to choose whether to meet and establish a relationship with their adult children, they do not seek your protection.

Just as birth parents do not seek special protection under the law, adoptive parents recognize that their families do not require legal protection. Many adoptive parents support their children in the quest to find their identity. As I was growing up, my own mother repeatedly expressed her desire to meet my birth mother, to discover what she was like and if I might resemble her.

Over the years, I have spoken to many adoptees as they first contemplate search. Overwhelmingly, they reveal their concern for the feelings of their adoptive parents. They explain that they love their parents and do not wish to hurt them. To avoid this, they proceed slowly and respectfully into the search-and-reunion process. These same individuals often tell me how the bonds within their adoptive family have grown stronger after reunion. Both my own personal experience and academic studies reinforce this view. Learning about their origins and heritage helps adoptees to feel more connected to the earth and recognize the value of the parental support they received from their adoptive parents. Knowing my birth mother and discovering what I had inherited from her allowed me to recognize and celebrate the many characteristics and traits I had learned from my adoptive mother, my mom.

I am here today to ask you to amend the laws governing adoption disclosure in Ontario. Laws in a democracy do change; in fact, they must change in order to remain relevant and truly reflect the society they are meant to protect. Laws governing other aspects of family life have changed even within my lifetime. If a couple married in 1970 and divorced in 2000, the settlement terms are based on the law in 2000 regardless of the fact that they didn't know what those would be 30 years earlier.

It may have made sense in 1927 to seal adoption records. Attitudes toward illegitimacy, infertility and out-of-wedlock pregnancies were very different from what they are today. Today, there is no stigma attached to these occurrences. In fact, they barely seem like an occurrence worthy of note. There is no shame in surrendering a child for adoption, in building a family through adoption or in being an adopted person with both a birth and adoptive heritage. Your support of Bill 77 will proclaim loudly that the Ontario government recognizes there is no shame in adoption. Vote yes to Bill 77. Vote away decades of shame and secrecy. Thank you.

**The Chair:** Thank you very much. That affords us time for one very quick question, so we'll start the rotation, Ms Dombrowsky.

**Mrs Leona Dombrowsky (Hastings-Frontenac-Lennox and Addington):** Good afternoon, Ms Rowney. Thank you very much for an excellent presentation. With regard to the comment you made, "at no time were birth mothers guaranteed confidentiality," would it be your

position, then, that this bill would in fact afford them a measure of protection that they don't have at the present time?

**Ms Rowney:** I think this bill allows them to make a decision and to come forward and say whether or not they seek to have a reunion with their children. In the present system, they don't have that opportunity; you're absolutely right.

**Mrs Dombrowsky:** Another presenter also indicated with regard to the veto that perhaps there should be some consideration to increasing the penalty to make it more effective, as it is in another jurisdiction. Do you have an opinion on that?

**Ms Rowney:** The Coalition for Open Adoption Records agrees with the Ontario Association of Children's Aid Societies that this is an acceptable way to amend the bill.

**The Chair:** Thank you for coming before us here this afternoon.

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#### MARIE KLAASSEN

**The Chair:** Our next presenter will be Marie Klaassen. Good afternoon and welcome to the committee. Just a reminder, we have 10 minutes for your presentation today.

**Ms Marie Klaassen:** I haven't been here long, but I feel like a bit of an anomaly. I'm a happy product of the Ontario provincial adoption system. I was adopted as an infant and raised in a loving and supportive home. My parents were very open about the issue of my adoption and that of my three siblings as well. They continually encouraged us to search if we wanted. I'm also a recently reunited adoptee. I decided in my early 30s, after giving birth to my own two children and realizing that I didn't have enough information that I needed to keep them safe in terms of genetic and medical history, that it was time to do the search, and it was also just time to know; I was settled enough.

I literally spent thousands and thousands of hours searching for my birth mother. It took a lot of money. It took a lot of time. This was thousands of hours away from my family, away from my job. I needed a lot of access to information. You needed to have good literacy skills. You needed to have knowledge of the system, which luckily I worked within, so I knew how bureaucracies worked and how to get information.

It struck me at a certain point that being forced to do a private search was sort of an elitist preoccupation, because other people with fewer resources, less money, less support simply wouldn't be able to do that, and I felt that was fundamentally wrong.

I found my birth mother, and I also found my birth sister, who was given up for adoption three years before I was born. My sister Janine is a very successful—she was also raised in a very loving home—local businesswoman, and she and I are diametrically opposed on the perspective of meeting birth mother. So I have met birth

mother, have a relationship with her. Janine has absolutely no interest, in fact would refuse contact if offered and I'm sure would support no contact for the adoptee. But I'm hoping to bring her along.

My birth mother, while very pleased to meet me—and we have an ongoing relationship, as I said—lives in complete secrecy with the issue of my birth and the birth of my sister. No one in her family knows. Her husband does not know. Her grown children, who are my brothers, don't know. And as I said to her as recently as last week, I didn't do all this searching to find her husband; I did it to find her. So we have a special relationship, but it's carried on in secrecy. And that's OK. That's certainly a lot more than I had before, and I'm happy with that.

Incidentally, although I'm sure it's not incidental to the birth fathers in the room, I did find my birth father as well, and he had no idea that I had ever been born, so he's still trying to sort out that whole revelation.

I began my search as an educated professional woman, and I fully expected to jump through a lot of bureaucratic hoops to get the information that I needed to progress. Even I found it a bit distressing, some of the paternalism of the barriers that I ran into. I sat in front of a social worker who had pulled together my non-identifying information, and she flipped through a file and decided what I needed to know and what I didn't need to know. I found that both demoralizing and patronizing.

So the searcher, being me, turns elsewhere and does the search privately. I did all of my search myself, but at each intervention, at each junction, when I pressed for information or searched for records or asked questions, I felt like I was putting my birth mother's confidentiality at risk. I was very secretive, but people aren't stupid. The 4,000th call that the woman in charge of the telephone directories in Timmins gets from someone doing genealogical research in the 1960s, you don't have to be too bright.

In any case, I felt that being forced into doing a private search put my birth mother's confidentiality at risk, and in fact that was the first thing she asked me when I called her: how did I find her and did anybody know. Because nobody knew and nobody knows.

When I started this search, I was a settled, psychologically grounded person, and nonetheless, I found it very destabilizing, much more emotionally destabilizing than I ever expected it to be. What saved me was that I was ready, I was committed, I had bought into this, I had done the planning and I had been in the driver's seat.

I know this is not going to be a popular sentiment, but I'm really glad it was that way. I don't know how well I would have done had this hit me out of the blue before I was at that place in my life.

In terms of overall statements, I'm in favour of the bill. The current system is set up to force private searches, which are both elitist and threaten the privacy of birth mothers. I don't feel that a contract made about me at the time of my birth should continue to bind my rights to information as an adult.

The records should be open to the adult adoptee. They should be also accompanied, however, by evidence-based guidelines or a set of recommendations for initiating contact. It's not an easy thing to do. There should be, in my view, voluntary but strongly recommended counselling about the impact of this.

I agree with someone else who spoke that there should be an expectation that birth mothers continue to act in the best interest of their child by providing up-to-date medical information, whether they desire direct contact or not. I think that's pretty basic.

That's all I have to say. Thank you for the opportunity to speak.

**The Chair:** Thank you very much. Considering that, I think from all parties, we can barely get our name out in less than a minute, I'm going to suggest that it's probably more appropriate to just thank you for your presentation than launch into a line of questioning now. Thank you very much for coming before us here this afternoon.

#### KARL HAIG

**The Chair:** Our next presenter will be Mr Karl Haig. Good afternoon. Welcome to the committee. Just a reminder that we have 10 minutes for your presentation.

**Mr Karl Haig:** My name is Karl Haig, and I have a problem with the adoption thing. I think it's time that we stop taping a little here and a little there. We should get this thing straightened out. There is a lot of dishonesty in this thing, and the corruption is so unbelievable it isn't funny. I think that must be straightened out.

First of all, I'm going to say it so it's not so much of a shock: religion is something that's brainwashed into us. We're not born one religion or another; we are born human beings. The Catholics here are the worst crooks that ever existed. They had the birth mothers in these homes for unwed mothers. There they were trampling on them to get their esteem low, and then they pushed a paper under their nose and said, "Sign it." So they signed something; they often didn't know what they signed. It turned out to be an adoption agreement, and then they had to worry about the father, because the father separates too. The father has to sign the adoption agreement too. That's what I was told. But then they falsified the names on the adoption agreement. Now, that is a criminal act. If I were to falsify records, I'd be charged. If I were to take somebody else's kids away, I'd also be charged.

Now, I think it's about time this place gets cleaned up. These are human rights violations. I went to a human rights meeting in the Delta Chelsea Hotel, and I brought it up. I was told that it's definitely a human rights violation.

So I don't have any rights to know my own kids? I came to this country to be a stud for somebody else? What kind of a thing is this? I think the Catholics should be labelled dangerous offenders. Everywhere they are involved, there is trouble: in orphanages, in schools and also in these homes for unwed mothers and even the Catholic children's aid society. It's absolutely a disgrace.

I think they should be nailed just the same as anybody else.

Do I have rights too? Who protects my rights? Does the government protect our rights or don't we have any rights? We're just simply pawns you can do what you want with.

I've been searching for the kids. I didn't know. I was forced into something that resulted in the first boy. I was only here a half a year, and I didn't know my way around. Now, Canada was a lot different than Europe. Even though it's said to be pretty close, there is a lot of difference.

There was an article in the paper. This is very interesting. It features adoptees. It also features these brainstorm types, adoption council and all of them. They try to put something over on us. I don't go for that. I think that's dishonesty. I think they should butt out. I think people should have rights concerning their kids. I don't think kids should be adopted. I don't think kids should be advertised. They are not items. They're human beings, and I think they should be treated that way. In this article about adoptees, these brainstorms say—and then there are researchers who research the whole thing.

1700

**The Chair:** Can you just make sure the document doesn't block the microphone, please? Hansard is having trouble picking up your comments.

**Mr Haig:** Pardon?

**The Chair:** Don't hold the paper in front of the microphone. You're blocking the microphone the way you're holding the paper, so it's not picking up your comments.

**Mr Haig:** I didn't understand what you said, because I'm a little hard of hearing. I worked in a place that was really noisy, and it affected my hearing.

Anyway, I'd like to see something done to straighten it out, and I think we need a huge amount of honesty brought in. In my case, I was set up and forced into something. The mother told me she was 17. She lied, and I didn't know it until I found out she had died. I searched for her grave, and it said, "1942 to 1983." If she was born in 1942, she would have been 15 in 1957.

The first boy was born when she was 16. The Catholic children's aid society always told me they didn't know anything about the first boy. That's a lie, because I also found out that they kept her in a home for unwed mothers on St Clair, just before it goes down to Warden.

Then she came back 10 years later. I had bought a house the year before, and I shared it with a friend. My friend was there and let her in. Anyway, when she came in again, she didn't know I knew about the boy. She was talking away about a fellow she had married in the States who lived in Connecticut. After a little while listening to her, I said to her, "I'd like to ask you some questions." I said, "Where is the boy?" She said she had him adopted. It was like somebody hit me on the head with a sledgehammer. I kept asking about the boy every time I saw her. She came back for about two months. She could be very pushy about certain things, and I think she realized

that this had really hit me hard and that it would cause some problems. So she made a move. She thought that if we had another child, I wouldn't ask any more, I guess. But I still asked her all the time. I didn't know she was pregnant again, and she disappeared again. Then I had to find out about the second boy when I searched for the first boy. At that time, the second boy was 25 years old.

Where do I come in? I'm a father, and I should have a right. Every day I'm reminded of it. I go out on the street and I see people with their kids and I ask myself, "Where do I come in? Do I have rights too?" I'd like to see my rights upheld and protected.

The first boy called me one time. I slipped up. There was somebody who used to call me all the time who wanted to sell me a book, like a family tree, and I didn't want to buy it. I thought it was them. They came up with different come-ons all the time.

Then I found out about the second boy. I went up to the place where she used to live, and I tried to find out where the mother was. I didn't know she had died. So I talked to this young fellow who came down the street. I asked him, "Could you tell me where the people live who lived here for a long time and are at least 45 years old?" He didn't know. He was very nice; he was very talkative. I had to tell him why I asked. So I said, "I used to see a girl here and we had a son." At the time, I didn't know there was a second boy, and I don't think the two boys even know about each other.

What kind of thing is this? I came to this country. I had no intention to be a stud for somebody else, and I don't have that intention now either. The older boy is now 43, and the younger boy is 33. I want the files opened, because these adoptions were a criminal act. They put a different name down for the father. With the second boy, they put a guy down who worked for the Catholic children's aid society. That's a disgrace.

I went to the place where they keep the records, and first they were very reluctant. Then, this Jennifer who was there said, "Write the whole thing out. We'll evaluate on that if we can tell you." But I didn't hear anything. Then I called again and was told, "You weren't married." No, I wasn't married, because I didn't have a chance to get married. When I found out about the first boy, I went back to the mother's home, and I wanted to ask her if she wanted to get married. But I couldn't find her anywhere.

Now, the whole set-up was not the mother. I found out that the mother was 15. It was so well planned that it definitely was not the mother. I'd like to have this opened. The cover-up on it is so huge. I can give you a list of at least 20 people that are involved in the cover-up. Parent Finders—that Kramer worked in the same welfare office as the mother, and she knows the truth about it. She's another one.

**The Chair:** Mr Haig, we're already over time. I'm going to have to ask you to wrap up your comments very quickly.

**Mr Haig:** The last time she said that parents shouldn't have the right to search. They signed the agreement. Well, I didn't sign anything. I don't think parents should

have the right too, because she didn't say under what conditions they signed, and that's very important.

**The Chair:** Thank you very much for coming before us this afternoon.

#### ANDREA NÉMETH

**The Chair:** Our next presentation will be from Ms Andrea Németh. Good afternoon. Welcome to the committee.

**Ms Andrea Németh:** Good afternoon. My name is Andrea Németh, and this is my birth mother, Caren Healy Jones.

I am speaking to the committee today not because I'm unhappy about having been adopted, but because I have had a very positive experience with it. If ever there was an adoption that happened the way it was supposed to, it was mine. I was adopted by loving parents who gave me every opportunity, and I'm speaking here today with their full support.

My birth mother, who is here with me, maintains that her decision to place her baby for adoption, while the only decision that was available to her at the time, was still the right thing for her and for me under the circumstances. Since being reunited six years ago, our relationship has added immeasurably not only to our own lives but to the lives of both our extended families. My birth and adoptive families have shared holiday meals, celebrated together and supported one another through difficult times.

My birth mother's husband, himself the adoptive father of two daughters, has seen first-hand the positive result of an adoption reunion. His daughters, both teenagers now, have a model of the relationship between a birth mother and her adult child to give them perspective.

My adoptive mother and my birth mother's mother, that is, my birth grandmother, have become fast friends, writing each other letters regularly, even on a weekly basis. Both my families have benefited from adoption and from reunion.

It is important for me to preface my remarks with this information, because I know the committee has heard a great deal about the pain and grief that too often accompany an adoption. I know that while we may be moved by the pain of others, it is easy for us then to dismiss them, to think their pain speaks for them and that were they healthy and whole they would feel differently. I am here to tell you that I am healthy and whole and I do not feel differently about the right of adoptees to access their original birth certificates.

Every other adult citizen of this province has the right to his or her original, unaltered birth information. For no other reason than that I was adopted as an infant—an arrangement into which I did not enter and from which, even as an adult, I cannot leave—I am denied that right. I am told that this is because I require protection from the circumstances surrounding my birth and because my birth mother requires protection from the shame of her out-of-wedlock pregnancy. I would respond that this

protection should not be the state's to compel but rather mine or my birth mother's to request. We should not be "protected" from one another against our wills.

As well, it a gross presumption that the law should decide with what information I am able to cope. I know that I speak for many, many adoptees when I say we have already imagined whatever worst-case scenario could possibly have surrounded our births: rape, incest, madness. Naturally, these are the worst fears of any adoptee. But, as we know, the greatest fear is fear itself. Most of us decide that the truth, no matter how ugly, is preferable to the horror of endless possibility.

1710

There is some concern that opening up birth records to adoptees will be detrimental to their relationships with their adoptive families. Every family, whether birth or adoptive, has its own problems, but no family is destroyed by one piece of information. Any family that appears to have been surely had a host of previously unacknowledged difficulties.

When I first met my birth mother, my adoptive parents, though they wanted what was best for me, did have anxieties about how my relationship with her would impact on our family's relationships. I told my mother that I perceived my relationship with my birth family to be akin to a marriage. Would my mother feel upset or threatened if I were to marry and have a loving relationship with my mother-in-law? Of course not. She would recognize that my love for another parent would not detract from my love for her or my father. To suggest that adoptees who experience reunion do not love their adoptive parents, or love them less after the reunion, is as absurd as suggesting that parents who have a second child don't love the first one as much as they once did.

One of the chief complaints of adoptees about the current legislation is that the law infantilizes us. We are forever adopted children, never adults who were adopted. Though this may seem like a nebulous, semantic difference, it is important to consider the difference between the two. Children have decisions made for them; adults make their own decisions. Children require the protection of adults; adults choose whether or not they require protection. Children are presumed not to know what is best for them; adults are expected to know what is best for them.

Since I realize that in five minutes I am not going to change this perception of adoptees as eternal children, I would remind the committee that in dealing with children the law is charged to do what is in their best interests. To that end, I ask you to do what is in the best interests of adopted children: when they become adults, treat them like adults. Give them access to the information that is rightfully theirs. Support Bill 77 and open adoptees' birth records.

**The Chair:** Thank you very much. That gives us a couple of minutes for one question by Ms Churley.

**Ms Marilyn Churley (Toronto-Danforth):** I absolutely have to take this opportunity—I hope he doesn't kill me; my son just walked in. Billy Boertjes is sitting

right there. So, you have another united birth parent and child here. "Child." See? I did it.

I wanted to ask you very quickly about the no-contact veto and your feeling about that.

**Ms Németh:** I think it's a necessary evil. I think it provides protection to those people who require it, but I think that most people probably don't.

**Ms Churley:** So you think it's necessary just for those few who need it?

**Ms Németh:** That's right.

**Ms Churley:** Your experience is, as other people and all the research I've looked at have said, that there's little or no evidence it's been breached in any jurisdiction that has opened up the records?

**Ms Németh:** That's the knowledge I have as well.

**Ms Churley:** OK. Thank you.

**Ms Németh:** You're welcome.

**The Chair:** Thank you very much. We appreciate your coming before us.

And Marilyn, when do I ever get upset with anything you would do or say?

**Ms Churley:** Never.

**The Chair:** Never. Exactly.

JOE MACDONALD

**The Chair:** Our next presentation will be from Mr Joe MacDonald. Good afternoon. Welcome to the committee.

**Mr Joe MacDonald:** Good afternoon. I just had one of those horrible experiences where I realized that almost anything I could say has just been said before me.

My name is Joe MacDonald, and I'm here representing my wife, our 10-month-old daughter and myself.

Both my wife and I are adopted, and my wife, through a long and winding road, was able to be reunited with both sides of her birth family in the late 1980s. For Shirley and for both those families it's been a cathartic and therapeutic experience. It's been very valuable. If there's been a down side to it, it's that the number of people I now have to remember has grown exponentially. There are too many Toms in the world, apparently.

In my own case, my twin sister and I were adopted at the age of 10 months. We grew up in the same home, and I guess it was as happy as homes can be. When we were five years of age, my mother decided she would explain to us that we were adopted. We were going to a new school and there were four or five kids in our class who were also adopted, and my parents simply didn't want us to find out in the schoolyard that we were adopted.

My mother had the opportunity to share with us, I think, more information than is often the case. We found out what our birth names were, and we found out that our birth mother was Irish and our birth father was probably Australian, but nobody really knew.

I have to tell you—I'll never forget it—that when she told us that, I was thinking more about going out to play than hearing this thing about adoption. It didn't quite register, and it didn't make much sense to me. In fact, I didn't really care. But I think what has happened over the

years, as I've grown older, as I've taken on more responsibilities, as I've become an adult more or less, is that there's something missing in my life. There's information about me that I simply don't have access to, or certainly easy access to.

Once you are adopted, you are always adopted. I will never not be adopted. But as an adopted child, as an adopted adult, an individual, I don't really and truly know who I am, I don't really and truly know where I came from, I can't put a name to a face, because I have neither of them available to me.

It did take me a very long time to get to the point where I thought seriously about looking for my birth mother. I had been asked for years and years by friends who were not adopted, "Why don't you do it?" I was very clear with them that I thought giving up a child—in this case, two children—for adoption was not an easy decision for anybody to make, and I could only imagine the circumstances. I didn't want to knock on some woman's door and say, "Hi. You may not remember me, but does July 11, 1954, ring a bell?" I just thought it would be cruel and insensitive and, for the most part, I was happy enough doing what I was doing. But again, as things change in life, so did my feelings, and I've come to feel I've been cheated out of something very personal and very important and, in many respects, very human.

There's no anchor for me, other than May 1955. There's a chunk that's missing, and I can't retrieve that, although in 1994 I did get my non-identifying information, and as soon as I could, I put myself on the adoption registry. I have to tell you that even the non-identifying information was very interesting. Until that time, as far as I knew, I had no birth weight. But there it was; I had a birth weight. This is a curious thing. I have a twin sister adopted by the same family, raised together. The non-identifying information indicates that I was Baby A, and I have a twin sister, Baby B. They wouldn't name her in the non-identifying information. I think my sister has a copy where she is told that Baby A is her twin brother, but I'm not identified.

I found I had a birth weight. I found that my birth mother was 36 years old and, in fact, Irish. Other information I was able to gather: indeed, my name at birth was Anthony Francis O'Shea, I am Irish and I am Catholic, and my name was changed when I was adopted. I also found out that I have a half-sister born a year before. Frankly, I still don't know what to do with that information, other than explain to the folks running the ADR that if they can't find my birth mother, please try to find my half-sister. It's a very curious thing. Unless you've been in this place and live in this place, you could never really know it.

Bill 77 is long past due, and I support it wholeheartedly. I went through the minutes of the social development committee on Bill 158 over the weekend and, for the life of me, I can't see the argument against a bill like this. I've been involved in politics in a whole lot of different ways for about 30 years. Very seldom has it been my experience that legislation or the opportunity for

decision-makers comes along where you can do something that is simply right. This is that kind of legislation. This is simply right.

I am an adult. I think I have the right to information about my life—very personal information, medical history. My daughter is 10 months old. Grace in fact has this gap in her life. She's never going to know what her birth grandmother looked like. She doesn't know whether the fact that she's got sort of strawberry blond hair is because of her birth grandmother or her birth father or her grandparents. She'll never know that until I can find out, and that's not fair to her. We didn't know, because I was not in touch with my birth parents, if there was something I was passing on to Grace that was going to be genetically debilitating. We still don't know that. Grace could have children and still not know that, because it takes so long. It is so hard for an adoptee, a birth parent or an adoptive parent to get the information we need.

1720

It's a strange thing. We spend a lot of time, money and energy uncovering and trying to determine the roots of the race of humankind. There's a reason we study past civilizations and old bones and try to uncover the links that bind us all. I think we need to know who we are and where we belong because it gives us guidance and context and it allows us to define ourselves and others. It is part of a very deep psychological and developmental need to make sense of ourselves and our world.

I think you're going to hear, if you haven't heard, from a number of people who will support this bill and those who won't support it. I'd only ask you to take this bit of advice, if I could. Often people will sit before you and say, "Well, here's an example of how things have gone awry. The reunion did not work out, so you must protect people from that." We sometimes make the mistake of reasoning from the particular to the general. It's the kind of thing undergraduate students do all the time. I'd like the committee not to fall into that gap. I'd like your respective caucuses not to fall into that. I'd like you to look at what is right and your opportunity to take steps to redress a wrong.

I have a need right now to know who I am and where I come from, and to determine where I belong. My daughter also has that need. This bill, I think, balances these needs and rights with my birth mother's and birth sisters' rights to privacy.

I don't have anything else to say.

**The Chair:** Thank you very much. You timed that very well. We appreciate you coming before the committee here this afternoon.

#### ADOPTION COUNCIL OF ONTARIO

**The Chair:** Our next presentation will be from the Adoption Council of Ontario. Good afternoon and welcome to the committee. Just a reminder that we've got 15 minutes for your presentation.

**Dr Michael Grand:** Thank you. My name is Dr Michael Grand. I'm a professor of psychology at the

University of Guelph. I'm a member of the board of directors of the Adoption Council of Canada and the Adoption Council of Ontario. The Adoption Council of Ontario is the largest adoption organization in the province. Its membership is drawn from adoptive parents, adoptees, birth parents and professionals in adoption. I'm also the co-director of the National Adoption Study of Canada. This study is funded by Health and Welfare Canada. It is the most comprehensive study undertaken in the country to describe and assess adoption policy and practice. The results of the study are published in my book *Adoption in Canada*.

Good policy should not be based upon opinions or casual observation, nor should policy be determined by single-case examples. It is impossible to write law that will cover every instance. If this were the standard we used, then we would not allow anyone to drive a car for fear of a single accident. We would not engage in business for fear of a fraudulent transaction. I'm sure you see the ludicrousness of taking the extreme position. Law must be written in a manner that attempts to do the most good in the circumstances while at the same time attempting to limit the possibilities of harm.

This is the approach that has been taken in Bill 77. It attempts to maximize the most good for the adoption community while putting in place reasonable safeguards that will minimize harm. The provisions in Bill 77 are based upon the best research findings we have concerning the process of adoption. They are not an emotional wish list. They are premised upon well-drawn scientific data. In this light, I would like to share with you some of the research on adoption as it pertains to this bill.

First, let me address the question of whether a contact veto will be a strong enough disincentive to protect the privacy rights of those being sought. As you have already heard, in England, Scotland, Wales, Northern Ireland, Israel, Argentina, Mexico, several of the United States, Denmark, Holland, Norway, Sweden, Finland, New Zealand, Australia, British Columbia, Newfoundland, the Northwest Territories and Nunavut, adoptees can approach the respective birth registries and obtain identifying birth information. In preparation for these hearings, ministries in England, New Zealand, New South Wales and British Columbia were contacted to learn whether they found the contact veto to be strong enough to deal with those circumstances where the non-searching party's privacy was requested. All of the jurisdictions reported they had not had a single instance in which it was necessary to take legal action under the provisions of their respective pieces of legislation. Simply put, the contact veto works.

Are adoptees at risk in heading into a reunion with an abusing birth parent? This question was raised at the hearings on Monday. The first thing we must remember is that we are not talking about adopted children. We are talking about adult adoptees and birth parents who are well into middle age and beyond. Secondly, none of the jurisdictions that have been contacted reported any instance of abuse.

In the national adoption study I authored, we asked all 51 children's aid societies in Ontario, as well as over 300 other practitioners and agencies across the country, about search and reunion. Not a single respondent raised the issue of re-abuse as a concern if records were to be opened. I travelled to every province and territory in the country as part of the feedback process. I met with the provincial adoption coordinators, as well as a wide cross-section of professionals in adoption, adoptees, birth parents and adoptive parents. There was not a single instance in which any of these groups voiced concern for this matter.

I would also point out that there are health, safety and welfare provisions in the Child and Family Services Act that will still be in place when Bill 77 is passed. There are laws on the books that address issues of harassment and criminal intent. These provisions have a broad enough reach to deal with the possibility of harm.

Will adoptive and birth families be destroyed if this bill is put into place? Again, the research literature is clear on this matter: openness serves the best interests of all parties to an adoption. You heard the presentations of adoptive parents on Monday. Their experiences mirror the research. In those families where there's openness, adoptive parents feel greater entitlement to parent and have less fear of losing the adoptee. My published study of searching clearly indicates that when adoptive parents and adoptees search together, a stronger bond is formed between them. It was in those families where the adoptive parent rejected the idea of searching that there was distance between the family members.

We also know from several investigations that search is not motivated by rejection of the adoptive family. It is a normal response for any person who is unable to write chapter one of their lives. Just ask yourself: if it were made known to you today that behind a government door there was a file that contained life-defining information about your identity that was denied to you by law, would you personally sit back and say it was unimportant to you? Of course not. Seeking information as would be allowed in Bill 77 is about an expansion of a sense of identity. It is not about rejection of adoptive families.

Will Bill 77 destroy the lives of birth parents who wish to keep their pasts a secret? Let us look at the data. For 25 years I've been conducting clinical interviews with members of the adoption community as part of my research at the university. In only one instance have I ever encountered a birth parent who felt that her life had been ruined by exposure. There were some who were unhappy about having to deal with the past, but the overwhelming majority were simply relieved that they now had the opportunity to deal with the wound of loss.

This is not an easy thing to do, but rarely are important tasks easy to accomplish. We should remember that there is no reported crisis of upheaval in the lives of birth parents in those jurisdictions where the files have been opened. This is the evidence that we must use to make decisions about social policy and adoption.

What is the price of not opening the records? The research indicates that adoptees appear in mental health facilities at a higher rate than would be expected given their numbers in the population. From the clinical profiles presented, it is clear that issues of identity are at the heart of many of the difficulties that adoptees experience. Not opening records comes with a high price, both psychological and financial. At a time of restraint, I would think you would be looking for ways to eliminate the conditions that create the need for such expensive services. Opening records will do much to rectify the situation.

In 1993, Kerry Daly and I published a paper reviewing the literature on birth parents' reactions to openness. What we found was that there was a direct relationship. The more open the adoption, the more birth parents found adaptive means of responding to the placement. However, with time, birth parents do not get over the fact of placement. It remains as a major loss in their lives. Opening records will go some way to healing that wound. For those of you who are thinking about voting against this bill, I would ask you to recognize that every rejection of bills to open adoption records is a major retraumatizing of birth parents. Life does not just go on; loss is renewed, and those who reject opening the records must be aware of the consequences of their actions.

1730

Finally, I would remind the committee of the tremendous medical cost of keeping people from knowing their origins. You heard evidence on Monday of the effects of a closed system on the health and well-being of several generations beyond the placement. This is an unacceptable cost of closed records. Every citizen of Ontario deserves equal medical care, regardless of the circumstances of their birth and upbringing. With restricted access to information, we put the health of adoptees, birth parents and their extended families at risk. It is not enough to say that access to the medical records at the time of birth will cover this issue. Genetic diseases often do not appear until later in life. Adults must have a complete, up-to-date medical history.

I have a number of recommendations, but I will limit them to two in the interests of time.

I think we must allow adoptive parents to seek identifying information when their adopted children are still minors. If the parents believe that it is in the best interests of their children to have identifying information about genetic origins and social and medical history, then they should be allowed access to this information before the adoptee is an adult. After the adoptee is an adult, that decision should be exclusively in the hands of the adoptee. Also, given the importance of having a complete medical history, we should make it mandatory for all those filing a contact veto to accompany it with a complete medical history.

In conclusion, I would once again stress that the decision to open the records is one that finds strong support in the research on adoption. To reject it on emotional grounds is not the way to go about developing

strong social policy. The research speaks for itself. Please join with the Adoption Council of Ontario, whose board of directors has unanimously supported Bill 77. We urge you to do the same. Thank you.

**The Chair:** We have time for a quick round of questioning. This time the turn would normally go to government, if you have any questions.

**Mr Norm Miller (Parry Sound-Muskoka):** Thank you for your presentation today. On your suggestions about allowing adopted children younger than 18 to have access to their records, how would you suggest that would work?

**Dr Grand:** Given that below the age of 18, the individual is still technically a child, that right, I think, belongs to the adoptive parents, because they have the responsibility for raising that child and doing what they feel is in the best interests of that child.

We had a case yesterday presented to us by Patricia Fenton, who described the very example of what I've described. She felt it was in the best interests of her child to know her origins, and so went about making contact between the birth family and the adoptive family. I think we should leave this open, but at the discretion of the adoptive family, until the age of 18. After that, it is an exclusive right and responsibility of adoptees.

**Ms Marilyn Mushinski (Scarborough Centre):** I just have one question. A very good friend of mine adopted, I guess about 16 years ago now. It was a completely open adoption. If I recall correctly, the adoption occurred through the Children's Aid Society of Toronto. It was my understanding that medical records went with the adoption. Is that a standard practice today?

**Dr Grand:** We had an example on Monday in which records definitely did not go with the adoption, causing great harm to the adoptee and her subsequent family. So one can never make that assumption.

The second issue is that if records are revealed under the non-identifying information, those are records that will be 18 years old or more. For many, it's important to know what's going on now, because many of these genetic diseases do not appear when one is young but when one grows older. As a consequence, without an updated record, you're always remaining vulnerable, and that vulnerability goes beyond one generation.

**Ms Mushinski:** Just one more quick question. The Ontario Association of Children's Aid Societies did recommend some amendments, I guess primarily to do with disclosure. Were you here when they gave that submission? Do you have any opinion with respect to their recommendations?

**Dr Grand:** Well, their strongest point had to do with raising the penalties around breaking a contact veto. I think all of the evidence points to the fact that I don't care if you make it a \$100,000 veto, it's not going to be broken. The evidence is that it isn't being broken.

England has been open since 1976. Adoptees walk down to the registry and get their original names and the names of their birth parents, and there's no crisis. So if this committee feels that it will make them feel better to

increase the fine to serve other political needs, OK, if that will help the bill pass. But truth be told, it's not necessary, simply because people are not breaking the veto.

We contacted each and every one of the constituencies I mentioned—British Columbia, England, New South Wales and New Zealand—and said, “Are you having trouble?” Each and every one of them said, “We have no documented court cases on our books. It's not happening.” So no matter what you do with that veto, it's not going to come into play.

Ms Rowney gave a good example of that this afternoon. There are enough issues around loss and rejection to make sure that people respect boundaries. There may be the odd case, but you're not going to say, “Give up all driver's licences because somebody's going to have an accident.” We don't have evidence of that accident happening yet.

**The Chair:** Thank you for coming before us this afternoon. We appreciate it.

#### CANADIAN COUNCIL OF BIRTHMOTHERS

**The Chair:** Our final presentation this afternoon will be from the Canadian Council of Birthmothers. Good afternoon and welcome to the committee. Just a reminder that we have 15 minutes for your presentation this afternoon.

**Ms Karen Lynn:** My name is Karen Lynn. I'm the president of the Canadian Council of Birthmothers. I'm here with my son, with whom I've been reunited for close to three years.

When I was 18 years old, in 1962, fresh out of high school, I went to visit and register at the college of my choice at the University of Toronto, Victoria College. I was standing outside the front doors of the beautiful old 19th-century building, all covered with ivy, including the ornate stone arch above the doors. A middle-aged man approached me and said, “My name is Moore. I work around here and I want to welcome you. You see the ivy up there covering the arch? Underneath the ivy is written in the stone, ‘The truth shall make you free.’ I intend to have the ivy removed from the words.” It turned out that this was the president of the college, to whom I am perpetually grateful for telling me about the truth. These words are carved in my soul now and I often think of them. All of my efforts to bring truth to adoption are informed by them.

Five years ago we couldn't have imagined this. Since our inception in January 2000, the Canadian Council of Birthmothers has grown to about 200 members. With the help of the Internet, we are growing rapidly. If Bill 77 is turned down, when we meet again, there will be hundreds of us.

For all these years, women who lost their children to adoption have been denied a voice. When adoption started in Canada in 1927, we were not consulted then, and until this hearing, we have not been consulted as a national group. I thank you and acknowledge this oppor-

tunity. Today I will speak from, and for, our own viewpoint.

1740

Thirty-eight years ago today, I gave birth to my first child in Toronto General Hospital. I had loved him from the moment I knew I was carrying him. I didn't want to lose him, but being a single, unsupported teenager and believing that he would be better off with a father, I signed the dreaded consent. For the crime of having a child out of wedlock, I was not allowed to hold him. Instead, I was confined to watching him behind the glass of a nursery wall. I offered to breast-feed him but was denied. I stood for hours staring at his precious little face until one day I noticed a note on his bassinet which read, “Mother does not want to see baby.” In one moment, I lost it. Crying my dissent to the nursing staff, I told them that I wouldn't surrender him unless they brought him to me. They hastily brought my precious little bundle to me and we spent one hour together as I fed him, changed him and held him in the natural way that all mothers know instinctively how to do. Then he was gone. Two and a half years later, I married his father.

In past decades, numerous pregnant women, most in their teens to mid-twenties, were unsupported, vulnerable and powerless. They were expected to surrender their newborns to adoption. The terms and methods used to extract that expectation over time have ranged from overt familial, systemic and social condemnation to covert methods extolling mothers' self-sacrifice to provide a better life for their newborns through adoption.

At the time of surrender, many of those young mothers were regarded as adult enough to make a legally binding decision without independent counsel, legal or otherwise; with little or no choice and few, if any, options provided; and without adequate information about, or the life experience to comprehend, the lifelong ramifications of adoption and closed records for themselves and their babies.

Open access to records for first mothers will help many to heal and to process their frozen trauma, grief and loss. It will allow them—us—to reclaim control over our right to choice, which for many was taken away in the circumstances of surrender. Many survivors of rape also want to know of their adult children, to be able to heal from the trauma of rape as well as the additional trauma of surrender.

Open records bias toward successful reunions by taking first mothers out of the shadows and allowing them to stand up for their right to know their now-adult children. Putting first mothers in the subordinate position of being contacted and shocked biases against reunions.

True honesty, respect for all parties and transparency in adoption is the acknowledgement and recognition of both mothers for the adopted person. Reunion is an intensely private matter. We respect adoptive families and wish to bring them no harm or embarrassment in reunion with our children.

In this hearing, we have already heard suggestions that adoptees who had been abused by their birth parents

might be re-abused if the original parents have access to their identities. Last February, I telephoned Nina Miller, a senior researcher with the adoption reunion registry in British Columbia, to ask her if this was their experience, if they had ever encountered a case of a birth parent seeking out his or her child to revisit abuse on an adoptee, now an adult. She responded that in 10 years of facilitating reunions with the ministry, she hasn't had a problem with this.

Nina recalls one reunion that had involved incest with a child who was later adopted. The adoptee was counselled and chose reunion, and the reunion went very well. She said, "Such a painful history is not as damaging as the secrecy of adoption." Ms Miller noted that people don't have to go into reunion without counselling. She said, "If records are open, people will go into reunions with eyes wide open. When people have to search in secret, that's when they encounter difficulties in reunion," and, "Abused children were mostly about three years old when they were apprehended and often not adopted. The vast majority of people were adopted as babies." There is no evidence from anywhere that this is a problem.

All progressive adoptive parents throughout the western world are joining us in the demand for open records. They are doing this with the profound understanding that adoption really is about the best interests of the child. Because they love their children, they want them to have the basic human right to knowledge of their origins. They are willing to accept the concept that an adopted person has two sets of parents.

The promise of confidentiality to birth mothers has been used as the reason for withholding personal adoption records from those they affect the most: first mothers and their children surrendered for adoption. The original intent may have been to keep the personal records of birth parents, the child and adoptive parents private from those whose interests they did not serve. This is all that we want now. Bill 77 proposes to release private information only to adopted people and their birth relatives.

Our survey of membership, Canada-wide, has not produced one first mother who was promised confidentiality, either verbally or in writing. First mothers who have asked for the documents they signed at the time of surrender say they do not have any reference to confidentiality. Please look at my own consent to adoption, which I signed in 1963, and the other signed by a mother in 1983. Both are attached to the document I gave you. You will see no reference to confidentiality or privacy on either.

The myth of promised confidentiality has been unchallenged and allowed to stand because of the silence of the majority of first mothers. The silence of the majority is not the confirmation of a promise but more likely a direct effect of the trauma, stigma, marginalization and victimization, as well as the unresolved grief and loss attached to adoption for many of us.

Confidentiality has ensured that many first mothers are silenced. It perpetuates the construction of unmarried pregnancy as a shame for the mother. This confidentiality is thus a part of the continuing punishment and price paid by first mothers. It is not a reward for losing their babies. It is dehumanizing to label all first mothers as wanting protection from their own children.

We were not promised confidentiality. This is a prevalent myth that seems to have been yoked to adoption to ensure secrecy. It was not designed by us. We signed the consent-to-adoption form in which we surrendered our parental rights—that's all. We got nothing in return. In the absence of any such proof of promise of confidentiality, it is only a matter of personal perception as to whether or not that confidentiality was implied and whether or not any number of mothers still living today are hoping to remain anonymous. Courts in several states in the US have ruled that this confidentiality did not and does not exist.

However, many first mothers were promised that we could go on with our lives and it would be as if we had never been pregnant, but that isn't true either. You can't promise what you can't make sure of, and the social work profession never followed up on this promise.

There have always been some records opened by judges, for whatever they considered good cause. And, of course, the records of children relinquished but never adopted were never sealed—not that the mother was ever notified of this. So there may be cases where the mothers may have thought they were promised confidentiality, but they weren't going to get it anyway.

Many of us have our surnames printed on the adoption order. This is not confidentiality. Adoptees frequently contact their birth mothers through private searches, without government assistance. This is not confidentiality. Thousands of birth mothers' names are published in newspapers, in e-mails, on Web sites and on registries. This is not confidentiality.

Enabling the few birth mothers who may want privacy punishes those of us who don't want it. This practice keeps us all in secrecy and shame, and perpetuates the damage to us, making it impossible to heal from our long-term disenfranchised grief.

The stalking and harassment laws are available to any person in our society who wishes to be left alone. First mothers can use these to avoid contact from their children or their children's father if they feel uncomfortable, just as any other person in society can.

**1750**

Fewer than 4% of those who could ask for a veto in BC actually opted for the veto. Many vetoes are left to lapse without being reactivated, as people get used to the idea of open records and contact. In New Zealand, after 10 years, the renewed vetoes dwindled to almost none. There are no reports of birth mothers' rights being violated in BC—the much feared "knock on the door"—none at all. Other governments which have opened up records recognize that there may be some birth mothers who want their privacy, but they weighed the concerns of

these few against the rights of all adoptees and decided that the adopters' needs were greater.

Secrecy damages adoptees, both physically, when they are small to obtain current valuable medical information, and psychologically, when they are subject to feelings of abandonment and loss.

A word about democracy: a country's legislation is supposed to express the will of the majority of its citizens. Therefore, nobody should enact or oppose a piece of legislation in order to cater to the special interests of a small minority when clearly the majority is against or in favour of this piece of legislation. Any concerns about the rights of the dissenting minority can be addressed, as Bill 77 has done with the no-contact notice, by adding to the law a provision that will do that without abrogating the rights of the majority.

Some people assume that there is a significant percentage of first mothers who want privacy with absolutely no evidence. Who are these women and where are they anyway? Are they an urban myth? Where is the evidence? All of our experience in the adoption community has shown us that the overwhelming majority of birth families welcome contact from their relatives who had been adopted. This includes first mothers. This runs contrary to the assumption that some first mothers want privacy. Will this issue be decided by assumption or fact?

I thank you again for this opportunity.

**The Chair:** Thank you very much for taking the time to come before us today. It's gone slightly over but that's the advantage of handing out your text. We saw where you were heading. I appreciate you taking the time.

Let me say to all the groups and all the witnesses who have come before us in the last two days of committee hearings that we very much appreciate the views. We know it's sometimes a very painful experience. It's tough enough to appear before legislative committees at the best of times, and on a subject like this, I'm sure doubly so. Your input will allow the minister and the members the opportunity to reflect and offer potential amendments.

**Mr Dave Levac (Brant):** A comment, Mr Chairman?

**The Chair:** Certainly.

**Mr Levac:** I wanted to thank you for your presentation. It was my first opportunity to speak, so I'd like to tell all of the presenters that it was extremely difficult for you in some circumstances; for others, a duty; and for others still, an opportunity to express personal situations.

I want to go on record as saying to the member from the NDP, Ms Churley, congratulations on what I perceive to be and know to be a very personal issue, along with your fight to continue to help people in their need as well. I think it's important for the presenters, in some cases, to say to you that this wasn't a politically correct thing to do, it was a people correct thing to do.

Those who have asked questions at the committee level that may have sounded to be against were basically,

at the committee level, an important aspect. Certain questions needed to be asked in order to clarify. I would suggest to you that anyone asking questions, at any party level, doesn't necessarily reflect trying to be politically correct or against in any way, shape or form.

On a personal note, I will indicate to you my total support for this bill.

**Mrs Dombrowsky:** With regard to the presentation made by Dr Grand, I was wondering if he would have a printed copy of his presentation. I know it will be in Hansard but it would be helpful if we had a more readable version.

**The Chair:** I can respond to that. The clerk has been promised a submission from Dr Grand tomorrow, and he will circulate it to all the committee members.

**Dr Grand:** As an academic, I found a grammatical error and I'm very uncomfortable with it.

**The Chair:** Ms Churley, do you wish to make a brief comment?

**Ms Churley:** Of course, we could all ask how much your book cost.

I want to take this opportunity to thank all of you and those who came down yesterday to give presentations. They were excellent presentations. No matter how you feel about this issue, I think we all learned so much from all of you.

I also want to thank the members of the committee. I have sat on a lot of committees for some time and I don't think I've ever seen a committee with members all around the table so attentive, so wrapped up and so willing to listen and learn.

I just want to let people know the next stage here. I hope all of us come out of this committee as advocates now. I've been working with the Minister of Community and Social Services. We have not set a date for the last day of what we call clause-by-clause, to go through the bill and come up with whatever recommendations. We are going to have to go through that process. I'll be working with both parties, particularly with the government that holds the reins of power here.

I do want to tell people that there is tremendous support within all three parties—there was, as you know, with all the other failed attempts—and I find that support growing. I think this is one area where we can work together in a non-partisan way. That is what we're all going to strive for as a result of these hearings. We don't want to let you down again, and I do thank you for your participation.

**The Chair:** Thank you, Ms Churley. We appreciate it.

Recognizing we have the motion of the House that has tentatively established, based on submissions, that we will probably next be convening in Windsor next Tuesday, I will say that the committee stands adjourned until then or until the call of the Chair.

*The committee adjourned at 1757.*

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A2CN  
XC16  
G23

Document  
Publication



G-15

G-15

ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 19 November 2001

# Journal des débats (Hansard)

Lundi 19 novembre 2001

## Standing committee on general government

Municipal Act, 2001

Waste Diversion Act, 2001

## Comité permanent des affaires gouvernementales

Loi de 2001 sur les municipalités

Loi de 2001 sur le  
réacheminement des déchets



Chair: Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 19 November 2001

Lundi 19 novembre 2001

*The committee met at 0958 in the Sheraton Hamilton Hotel, Hamilton.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Steve Gilchrist):** Good morning. I'll call the committee to order for consideration of Bill 111, An Act to revise the Municipal Act and to amend or repeal other Acts in relation to municipalities. The first item on our agenda is the report of the subcommittee on committee business. Mr Levac, I wonder if you'd be kind enough to move adoption of the report.

**Mr Dave Levac (Brant):** Certainly, Mr Chair.

The standing committee on general government report of the subcommittee on committee business:

Your subcommittee met on Thursday, November 8, 2001, to consider the method of proceeding on Bill 111, An Act to revise the Municipal Act and to amend or repeal other Acts in relation to municipalities, and recommends the following:

(1) That the clerk place an advertisement on the Ontario Parliamentary Channel and on the Internet. Additionally, notice will be provided to provincial newspapers by press release.

(2) That the Ministry of Municipal Affairs and Housing be requested to provide notice of the committee's public hearings by press release.

(3) That groups be offered 20 minutes in which to make their presentations, and individuals be offered 10 minutes in which to make their presentations.

(4) That the Chair, in consultation with the clerk, make all decisions with respect to scheduling.

(5) That each party provide the clerk of the committee with their prioritized list of potential witnesses, together with complete contact information, to be invited to appear at the committee's hearings in Windsor by no later than 12 noon on Friday, November 9, 2001.

(6) That each party provide the clerk of the committee with their prioritized list of potential witnesses, together with complete contact information, to be invited to appear at the committee's hearings in Hamilton, Toronto and Ottawa by no later than 12 noon on Friday, November 16, 2001.

(7) That the subcommittee determine whether reasonable requests by witnesses to have their travel expenses paid will be granted.

(8) That there be no opening statements.

(9) That the research officer prepare a summary of recommendations.

(10) That the Chair, in consultation with the clerk, make any other decisions necessary with respect to the committee's consideration of the bill.

So entered, Mr Chairman.

**The Chair:** Thank you, Mr Levac. Any comments? Seeing none, all those in favour of the adoption of the subcommittee report? Carried.

## MUNICIPAL ACT, 2001

## LOI DE 2001 SUR LES MUNICIPALITÉS

Consideration of Bill 111, An Act to revise the Municipal Act and to amend or repeal other Acts in relation to municipalities / Projet de loi 111, Loi révisant la Loi sur les municipalités et modifiant ou abrogeant d'autres lois en ce qui concerne les municipalités.

ONTARIO MUNICIPAL  
ADMINISTRATORS' ASSOCIATION

**The Chair:** Our first presentation this morning is from the Ontario Municipal Administrators' Association. Good morning and welcome to the committee. We have 20 minutes for your presentation. If you choose, you can leave some of that time for a question-and-answer period.

**Mr Roy Main:** Good morning, Mr Chairman and members. My name is Roy Main. I am here on behalf of the Ontario Municipal Administrators' Association. As president of that organization, I bring you representations from our membership.

Just to give you a little background of what the OMAA is all about, we represent our members, the chief administrative officers from municipalities throughout Ontario. At present we have over 150 members. We represent the very largest cities and communities in our province, many of the very small ones as well, and everything in between. Our role as an organization is to work toward continuous improvement of municipal government. It's a pleasure to be afforded this opportunity to make some of our representations to you.

The tack, the approach that I and my association have opted to take is to leave some of the specifics to organizations such as AMO, AMCTO, which is the clerks and treasurers association, and the municipal finance officers group. My comments this morning will be of a much

broader, general nature, to look at the general administrative issues that are contained in the act.

We, as an association, share the opinion—and I think what you will hear from the other municipal associations that attend before you—and believe that this act is an excellent first step toward revising the legislation, granting municipalities powers and authority. As well, the government embarked upon one of the most massive changes of services and realignment of responsibilities shortly after their first election through the infamous Who Does What program. Forgive me for my slight editorial comment about “infamous,” but it certainly did change the world in which municipalities operate.

At that time, and this takes us back to the mid-1990s, we were promised, as municipalities, legislative changes to accompany that realignment. It was often referred to as providing municipalities with a toolbox full of tools to carry on in the new world. We perceive the new Municipal Act as one of the most important tools that will fit into that box.

Municipal administrators across Ontario are particularly pleased that the legislation recognizes and acknowledges municipalities as “responsible and accountable governments.” It’s the first time I think we’ve seen that embodied in a piece of legislation. Equally, the OMAA is pleased that there is a commitment to consultation between the province and the municipal sector. Without consultation and joint understanding, it is difficult for a municipality to carry out the policies and programs the province wishes it to do.

With that brief prelude, I would like to get into a few specifics, some constructive criticisms and eight recommendations we would like this committee to consider.

The first issue is the granting of powers of a “natural person” to municipalities. As we know, many other provinces in Canada, perhaps most notably British Columbia, have made this provision, and we believe it is long overdue. We do have a concern, however, and that concern is that there’s an apparent unlimited ability of the province to restrict those powers through legislation and/or regulation. The opening comment I would like to make to you is that we trust this type of restriction will not be exercised lightly by the province. In simple terms, either you are a person of natural powers or you’re not.

On the topic of regulation, we note the municipal sector is being required to express an opinion on this bill with incomplete knowledge as to the regulations themselves. Obviously this is like buying a car without knowing what the interior is. We are concerned that those regulations come after the act or come too late before the implementation date of January 1, 2003.

Our first recommendation is that we encourage the government to move as quickly as possible to publish draft regulations in order that the municipal sector might provide comment well in advance of the January 1, 2003, implementation date.

In terms of the transition from the existing Municipal Act and related legislation, we also are concerned that the transition process be effectively managed.

Our second recommendation is that the government embark on a comprehensive program to achieve awareness, understanding, education and training with respect to the provisions and changes that will be required to be effected by municipalities in order to comply with this new act. The effects will be different for different municipalities and this process must—emphasizing “must”—be completed prior to July 1, 2002, in order that municipalities can undertake the steps they need individually to be prepared for the January 1 implementation date. The OMAA is willing to be an active participant in this process on behalf of its members and in concert with the province and other municipal associations.

As mentioned earlier, the OMAA believes this bill is an excellent first step, and as such would like to see steps taken to ensure the process of maturation in municipal legislation in Ontario continues. The new Municipal Act is but one of the many tools needed by municipalities, and all applicable acts must be kept current and appropriate.

Our third recommendation is that appropriate sunset provisions and/or processes for automatic review be incorporated in this act and the associated regulations in order to prevent a recurrence of municipal legislation not keeping current with changing provincial mandates, new business practices and the demands of a modern and dynamic society.

The broad scope of the sections up to and including section 23 are appreciated as they provide for creativity and flexibility in the administration of council-approved policy. However, the sections that follow tend to parallel to a very high degree the existing legislation, which is in many instances overly prescriptive.

Our fourth recommendation is that the province, in consultation with the municipal sector, undertake to begin no later than January 1, 2004, one year after the act becomes valid, a process of review of the act to determine if the detailed sections on items such as financial administration, as an example, could be recast in order to provide greater flexibility while still maintaining transparency and accountability. So what we are saying there is that one year after the implementation date we start to look at this act.

There are in fact specific examples of additions to highly restrictive or prescriptive procedures that have been added to this bill. A couple cause us concern. The first is section 275, which extends the period of a lame duck council and expands the actions that shall not be done after nomination day under the lame duck provisions, particularly to hire or dismiss any employee of the municipality. It is unclear to our association whether this section limits the ability of the council to delegate this responsibility to administration. If this is not the case, the filling of vacancies during this period, the dismissal for cause of any employee, and/or the hiring to replace those who retire or leave of their own volition would be unreasonably restricted.

Our recommendation to the amendment is that section 275 be amended to remove clause 275(1)(b).

1010

Also new are sections that require establishment of a procurement policy and adoption of a policy on the hiring of relatives of councillors, local board members or existing employees. Similarly, in section 271, detailed prescriptive requirements for a policy with respect to the procurement of goods and services and associated regulations are required by this bill. Through an informal canvass of our membership, virtually all the municipalities we represent, including all larger municipalities, certainly have policies that deal with these very things. We find it inconsistent that this type of policy should be incorporated in the new act. It seems to indicate a lack of confidence in municipal administrative policies and processes. This seems inconsistent to us, given the stated purpose of the act: to recognize municipalities "to be responsible and accountable governments."

Our recommendation is that sections 270 and 271 be deleted from the act in the absence of any data that would indicate municipalities do not currently act in an appropriate fashion in two key policy issues.

We also note that various sections have been incorporated and reordered with respect to accountability and reporting by municipalities. Our association actively supports openness, transparency, public reporting and accountability, and our association has been an active participant in the municipal performance measurement program and the municipal benchmarking initiative. These are two key issues. These represent those key and fundamental issues of openness and accountability. The OMA is concerned, however, that municipalities and our members will find themselves faced with a plethora of redundant reporting requirements and has expressed this concern most recently in a meeting with most deputy ministers implicated with municipal legislation.

In particular, our concern is one of duplication between the new Municipal Act and its requirements and potential regulations and Bill 46. It is recognized we're not here to talk about Bill 46, but if you are familiar with that piece of legislation, a great deal of what is included in Bill 46 is contained within the new Municipal Act. It seems redundant; it seems unnecessary duplication; it seems to add a layer of red tape.

Our recommendation is that Bill 46 be amended so as not to duplicate or provide for the opportunity of duplication of municipal accountability and reporting requirements that would only serve to add duplication and red tape to municipal administration.

Again, it is recognized that you are not here to deal with Bill 46, but rather Bill 111. We are comfortable with what's in Bill 111. We suggest to you that a statement be made that Bill 46 is redundant as it applies to the municipal sector.

We applaud the requirement in this bill for ongoing consultation between the province and municipalities in relation to matters of mutual interest. There is to be a memorandum of understanding considered between the province and representatives of the municipal sector. While the OMAA respects the ability of AMO to repre-

sent municipal issues, we would encourage both parties, the province and AMO, to accept consultation with municipal professional organizations such as ours. We feel there are others as well: AMCTO, the MFOA, the OGRA and the MEA. They're all vital municipal organizations in this province.

We therefore strongly encourage both parties to incorporate regular contact with professional organizations in this process of ongoing consultation. To make this act the best it can possibly be, speak to the people who are going to be implementing and using it.

We are somewhat sure that there very well may be buried in this very large bill—and we have to go through it much more closely. It is difficult without cross-referencing to existing legislation, but there are likely sections that will require amendment prior to January 1, 2003.

We assume that another act which will deal with the consequential amendments to other legislation will provide an opportunity to correct some of the technical shortcomings that will be discovered in this bill. As an example, I refer you to subsection 472(2), which appears to appoint a person who is currently a tax collector to be the deputy treasurer as of January 1. This requirement may have significant compensation or managerial impacts for a municipality, with no apparent benefit. We wish to catch items such as that one where we are unsure as to the intent. Where there may be flaws, not of a significant nature but of a minor nature, throughout this act, we would appreciate the opportunity of correcting them prior to January 1, 2003, at least to put the act in accord with what the intentions and the directions are.

Our recommendation is that the government actively provide an opportunity to all municipal associations through the consequential amendments to this act required in 2002 for corrections and opportunities for improvements to this bill. This is a significant opportunity for this government, and certainly for municipalities, to create a new Municipal Act that is appropriate and applicable. Can it be perfect the first time out? Perhaps not. Can we make it as perfect as possible? I think that should be our joint ambition. Our association is prepared to work with the province to see that that becomes reality.

In summary, while this act does not take municipal government in Ontario as far as the existing and proposed legislative amendments in some other provinces, it is, as I have stated, a very good first step. As general managers for municipalities, we believe that there is a need for ongoing examination and a review and renewal of our administrative structures and processes. We live in a dynamic world. We, as municipalities, must stay dynamic. We encourage the province to do the same, with its municipal legislation in particular, in order that the people of Ontario can be progressively and proactively served by the municipal order. OMAA would be pleased to provide input to any and all of the ongoing review process on any of what I have spoken to this morning.

Mr Chairman, I thank you for this opportunity and would welcome any questions.

**The Chair:** Thank you very much. Unfortunately, that leaves us with just under a minute. You've timed your presentation very well. Thank you for kicking off our hearings here this morning. We appreciate your comments.

#### CITY OF LONDON

**The Chair:** Our next presentation will be from the city of London. Good morning, and welcome to the committee.

**Mr Gordon Hume:** Thank you, Mr Chairman. Good morning, members of the committee. My name is Gord Hume. I'm a member of the board of control of the city of London. I've been asked by our mayor and city council to present to you this morning.

I'm joined by Grant Hopcroft, who is our deputy city solicitor, and perhaps of equal importance, if not more, he is a former city councillor and comptroller for the city of London who has extensive municipal experience and has been very active with both AMO and FCM over the years. He is the primary author of our brief.

I know committee members have a copy of our brief. I would like to highlight a few of the items, if I could, because we think that Bill 111, the Municipal Act is tremendously important.

It is an important step because we are recognizing municipalities as responsible and accountable governments. As you know, municipalities generally in Ontario have pressed the province for a number of years for a new Municipal Act. We accept that the intent of this new legislation is to grant municipalities broader authority and more flexibility in providing services to our citizens.

1020

While Bill 111 does not contain everything that London and, I suspect, the municipal sector wanted, it represents a significant improvement to the current act and overcomes many of the shortcomings of the 1998 draft. We will focus today on several issues and have some suggestions for the committee to consider that we believe would improve and strengthen the act. Perhaps we will start with the spheres and natural person powers. We are pleased with the extension of natural person powers to municipalities in a number of spheres of jurisdiction, and hope that this is but a first step in recognizing the needs of municipal governments for access to modern tools to meet our constituency needs. We also welcome the bill's endorsement of the principle of ongoing consultation between the province and municipalities. We think this is tremendously important. I hope that will be enshrined in the act.

Dealing with limitations on municipal authority, we suggest with respect that the same voters who elect members of our provincial Parliament are also the same voters who elect members of our municipal councils. We believe that the councils are accountable, open, responsible and fair. The ultimate accountability of course is the ballot box, as you will recognize. We are a little troubled by some of the limitations that Part II of the bill

includes. While the 10 new spheres of jurisdiction will grant municipalities greater authority to act and regulate in a number of areas—and we welcome that—the limitations in many situations, at least in the short term, will create as much uncertainty and difficulty for us about the extent of municipal authority as the current legislation does. For example, why is the broad interpretation provision in subsection 9(2) limited only to sections 8 and 11, rather than the entire bill? Greater clarification of these limitations and their intent would assist the municipal sector as the new act is implemented.

The third area deals with economic development, something that I think is important to all of us in the municipal sector and I know to the government as well. In fact, it is critically important, and we want to spend a moment dealing with this. The new economic development services sphere is very narrowly defined in the bill to mean promotion through dissemination of information and the acquisition, development and disposal of land for industrial, commercial and institutional purposes. We suggest this definition unduly limits the scope of local economic development activities, and it should be amended to grant greater flexibility to the municipal sector. Our suggestion, for example, would mean if you change the words “mean promotion” to “include promotion,” that would allow greater flexibility for municipalities. We think that's tremendously important.

The fourth area is bylaw enforcement. We are supportive of what the bill and the committee is proposing on that.

On the area of licensing, however, we do have a couple of issues. Except as otherwise provided in the act, licensing powers may only be exercised for three purposes, including consumer protection. “Consumer,” however, has not been defined in the bill. We suggest a broader definition of consumer or the addition of “protection of the public” to the list of purposes would clarify the scope of this part of the bill. Secondly, public meetings will be required prior to passage of licensing bylaws. We are concerned there's an apparent conflict between the procedural expectations of a public consultation meeting during development of the bylaw, and the conduct of a licensing hearing that is subject to the provisions of the Statutory Powers Procedure Act.

The sixth area we would like to comment on deals with the corporations. Mr Hopcroft is on the working committee that is involved with this, so if the committee would like any further thoughts, we have an acknowledged expert in this area as well. My comments would be that new powers include municipal authority to incorporate corporations for limited purposes and subject to conditions that will be defined by regulation. This is a welcome change, but we remain concerned that its full potential may never be realized if the regulations are too restrictive. We would encourage the government to continue consulting the municipal sector during the development, implementation and evolution of these regulations and the regulations contemplated elsewhere in the bill to ensure their ongoing feasibility and relevance.

Dealing with the open meetings question, the bill contains, as the committee is aware, a variety of new provisions with respect to open meetings, and now includes disposition as well as procurement of lands among those matters that can be discussed by council in camera. The latter change is most welcome. However, the bill does not resolve discrepancies between a municipality's obligations to protect privacy regarding commercial information under the Municipal Freedom of Information and Protection of Privacy Act and the requirement in the bill for discussion in public session of these same matters when they are brought before council. We would urge the committee to harmonize these provisions so that we can realize the potential for innovation in public-private partnerships.

The eighth deals with procurement policy. Frankly, we believe in the need for all governments to create policies regarding employment and procurement in the interests of fairness, accountability and delivery of the best value for our citizens. London has extensive policies and regulations that deal with this; I think most municipalities do. I think Roy Main referred to that in his comments, and we would certainly agree with that. We question specifically the need for and usefulness of the regulation-making powers in subsection 271(2). We do not accept that one set of rules can or will fit the needs of every municipality in every procurement decision that is made. These provisions are an unnecessary intrusion into municipal procurement practices.

The ninth area is the lame duck provisions, and this is troubling to us. The lame duck provisions of the existing act are going to be expanded so that municipal councils will be prohibited from dealing with an expanded list of matters between nomination day and the end of their term of office—that's roughly a two-month period—unless it can be determined that 75% of the members of the existing council will be returning to office on the new council. While council will have greater powers to delegate certain of these responsibilities, we believe the provision is overly restrictive.

One example of difficulty that would be caused by this would relate to the sale of industrial land and our city's capacity to respond in a timely way to investors who approach municipalities from time to time wanting to buy land and invest in our communities. The result is, if all Ontario municipalities are under the same restrictions for a couple of months, it's going to make it very difficult for new investors, outside investors from the US or Europe or wherever, to get answers or to do business in the province of Ontario. We're very concerned that there's potential for a loss of investment in this province because of this provision.

We suggest the section should be amended to shorten the lame duck period and to permit councils to exercise their normal powers unless it can be demonstrated that a majority of council will not be returning after their term of office expires.

Bill 46, the Public Sector Accountability Act, 2001: The financial administration part of the bill implements

new standards and procedures of accountability for the municipal sector. These are very similar to the provisions of the Public Sector Accountability Act, 2001, insofar as municipal governments are concerned. We recommend that Bill 46 be withdrawn or amended to remove its application to the municipal sector.

Eleven deals with municipal liability and, quite candidly, the bill contains no new relief for municipalities in the area of municipal liability. We have expressed a need for continued and extended protection from liability claims and we continue to urge the committee and the government to reform the laws pertaining to municipal liability arising out of joint and several liability judgments.

Dealing with the fees for occupation of highways, we are rather unhappy with the proposed new provision in subsection 477(8) that removes municipal authority to charge a fee to third parties to occupy a highway. We believe it is a setback for municipalities in Ontario. Occupation of our road allowances by others will cost the citizens of London millions of dollars. When our roads, sewers and watermains are reconstructed or repaired, we incur additional costs working around the pipes, wires and ductwork of a growing number of third parties. We also incur liability if such services are damaged or cut off during construction.

We believe municipalities should have the power to recover such costs and this subsection of the bill should be deleted. As the committee will be aware, FCM has appealed a recent CRTC decision that refers to this matter as well. It's a matter of real, serious concern, I think, to municipalities.

#### 1030

Finally on a specific matter, I would ask the committee's consideration of the impact of the London-Middlesex Act, 1992. Section 483 of the bill repeals many of the remaining sections of that act, but a noteworthy exception is the formula in section 48 of that act that requires the city of London to make payments on account of suburban roads to the county of Middlesex. Our payments this year will exceed \$1.1 million.

To the extent that these payments may be altered or eliminated in the future, we believe use of regulation rather than statute would give the minister, the city and the county more flexibility to deal with circumstances as they change and evolve in the years ahead. We strongly recommend that section 48 of the London Municipal Act, 1992, be repealed and replaced by regulation.

In conclusion, municipalities in Ontario have waited 150 years for modernization of our enabling legislation. While the new act addresses many concerns recognizing and regarding modernization of the legislative framework, explicit provisions for review of the act at timely intervals would ensure that municipal powers evolve to deal with new developments and challenges that are facing all of us in the years ahead. We suggest perhaps a five- to 10-year review each time.

Overall, we appreciate the work of the committee and the government in this regard. We are broadly supportive

of the act, but we do have the specific suggestions that I've presented to you this morning.

**The Chair:** Thank you very much. That affords us two minutes per caucus for a quick question from each caucus, beginning with the official opposition, Mr McMeekin.

**Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** Thank you, Gordon and Grant, for your presentation this morning. As we anticipated, it was very thorough and quite helpful.

Mr Hume, you mentioned in your segue to some of your specific comments that Bill 111 doesn't respond to all of the concerns that you would have liked to have seen addressed. Could you elaborate for us what specific concerns you would have liked to have seen the act address that were not addressed?

**Mr Hume:** I'll start perhaps with a general comment, if I could, and then I'll ask Mr Hopcroft for some specifics.

We believe very strongly that municipalities in Ontario are open, they are publicly elected, the power is in the hands of the people to make the changes at the ballot box and that municipalities are, frankly, evolving and changing and assuming a greater role in our society and in our Canadian government in the broad federal sense. We think there are going to be important new challenges ahead for municipalities, everything from economic development to how we handle environmental issues and so on.

We think local government should be recognized as a responsible role, a role that gives local governments authority and power that's appropriate to their issues and responsibilities, and while we have great respect for the province and the federal government, I have a personal belief, frankly, that municipalities should receive constitutional recognition in this country. That's a personal belief, I would add, not necessarily from London.

Perhaps I could ask Mr Hopcroft to summarize any additional points he would like as well.

**Mr Grant Hopcroft:** If I could summarize in general terms, I guess more spheres, be those narrowly defined or otherwise, fewer limitations and, I think, greater adherence to the flexibility of municipal governments to do what's right for their constituents.

**Mr Michael Prue (Beaches-East York):** I have two questions. Hopefully I can get them both in in two minutes. The first deals with the lame duck provisions. You have put in your memorandum here that you want to shorten the lame duck period, and generally I have no problem with what you're suggesting. Would you accept a period between election day and the swearing in of the new council? I do see some difficulty in allowing votes and trying to calculate 50% or 75%.

**Mr Hume:** That's broader than what we have down. That would be much more acceptable to us, yes.

**Mr Prue:** The second question relates to the fees for occupation of highways, subsection 477(8). I want to commend you, because in my reading of this, that went right over my head. You are saying that this section

should be deleted because of the "growing number of third parties." Can you tell me in terms of London at least what kind of revenues are being generated from fees from these third parties?

**Mr Hume:** Mr Prue, could I ask Mr Hopcroft to respond to that?

**Mr Prue:** Sure.

**Mr Hopcroft:** To put it bluntly, they're inadequate at the present time, predominantly because of issues with the CRTC and telecommunications companies. We'd prefer to fight that one out at the federal level without both arms tied behind our back by provincial legislation that would preclude use of those fees even if that court challenge is successful at the federal level.

We see increasing costs as we rebuild and renew our infrastructure—our roads infrastructure, our sewer infrastructure, our water infrastructure—and we see a growing need to put the costs that arise from the occupation of our road allowances directly on those that benefit from them, which are the utilities and businesses that profit from the use of public property. In fact, this provision will create a bias in favour of use of public highways as opposed to other rights of way, such as railways or other existing private rights of way, that under the present law would be considered by utilities or others. This creates a bias where the public highways will be free and it will create increasing congestion particularly in some of our older road allowances in the core of our urban communities.

**The Chair:** For the government, Mr Kells.

**Mr Morley Kells (Etobicoke-Lakeshore):** I appreciate your presentation and the one previous because you touch on similar points, and that's to be expected. There seem to be two common threads as we listen to presentations. One is that it's long overdue, and it's so obvious that it hits us in the head. The only comment I can make to that is that the province has been ruled by a number of governments over that period of time. The Conservatives have been here for a great deal of that, so we should take our share of the responsibility and it's probably fitting that we are applying ourselves to the bill.

The second point that seems to flow in any conversations I have is the concern that corporations and people involved in the municipal process have for regulations. It's the fear of the unknown sometimes, and I think it's probably very logical. In that sense, your comments on procurement and your worry there: the ministry's position obviously is that if a municipality has a sensible, well-thought-out, efficient procurement policy, then of course there is no need for the provincial government to interfere in any way. But naturally—and I think you can appreciate this—the government, in a prudent way, has to have a safety valve and really should retain the right to have a reg in a specific way.

Before you answer, if I may, I just might get to your specific, the London-Middlesex act. I understand that you and the county seem to be in some kind of agreement as to the fact that the money is probably more than deserved or needed or required. I suspect that we could take this back to the minister with some confidence if we had

something possibly in writing between the city and the county as to that assumption. I wouldn't want to pass an assumption on unless we had some kind of proof. If you could comment on those two questions, I'd be pleased.

**Mr Hume:** Thank you, Mr Kells. We would be happy in the city of London to provide the committee with our purchasing policies, which are followed by our municipality for example, and also by our boards and commissions in a general sense. We have a very public, open, thorough, comprehensive policy.

On the second matter, we would be very happy to undertake to consult with our friends at the county and see if we can get a letter from them or a joint letter from the city and the county to present to the minister.

**Mr Kells:** That would be very helpful.

**The Chair:** Thank you, gentlemen. We appreciate you coming before us here this morning.

1040

### CITY OF BURLINGTON

**The Chair:** Our next presentation will be from the city of Burlington. Good morning. Welcome to the committee.

**Mr Rob MacIsaac:** Good morning. I'm Rob MacIsaac and I'm joined by our assistant city solicitor, Nancy Shea Nicol. Nancy is here for at least two reasons. First of all, I'm fighting some kind of bug, so she's a backup voice in case my voice doesn't last, although that shouldn't make you feel that I'm going to speak for that long. She's also here in case somebody asks a really hard question. So I have somebody of substance here.

I'd like to begin by thanking the committee for the opportunity to briefly outline some of the city of Burlington's comments and concerns with respect to this legislation.

We are very pleased that the provincial government has seen fit to introduce Bill 111 in an attempt to update and modernize municipal legislation and provide new flexibility to municipalities. We congratulate the minister for undertaking this task, which no other minister has been able to do for 150 years.

The minister's announcements surrounding the bill suggested a "new, stronger and more mature relationship between municipalities and the provincial government," and we think there is no question that the bill advances the provincial-municipal relationship. However, we continue to have some concerns that the bill is not all it could be in terms of recognizing the coming of age that municipalities have seen in the last 10 to 15 years.

The province retains the ability to regulate in every area where municipalities are purported to have natural person powers and to restrict those powers, presumably if and when a municipality steps out of line. In addition, there are some new restrictions that have not previously existed. In my view, you need to give municipalities the flexibility they require to succeed in the modern environment even if it means that once in a while you are also giving them the chance to really mess up.

As I noted at the outset, there are many aspects of the bill that are positive, and I'll just review some of the sections that we think are really good.

The bill defines municipalities as persons, it defines "municipal purpose," and it contains provisions which direct a liberal interpretation of municipal powers. These provisions recognize municipalities as responsible and accountable governments and direct the courts to broadly interpret municipal powers, and rightly so, in our view. Municipalities ought to be fully responsible for and have jurisdiction over those matters that affect their residents. However, we remain concerned by impediments and restrictions to municipal powers within the legislation.

We applaud the concept that the province is endorsing consultation with municipalities. We would like to see it taken a step further and have a commitment to consultation rather than just an endorsement of the principle.

We support the provisions throughout the bill, and specifically section 251, which allow municipalities to determine what constitutes "reasonable notice."

With respect to the nuisance provisions, we think that these provisions will allow a municipality to deem a use a nuisance and thereby prohibit it. These provisions have the potential to be very helpful indeed to municipalities.

However, we are concerned that actions taken under section 130 are vulnerable, partially due to the elimination of the area of morality as contained in the old legislation. The insertion of the words "in any other act" will severely limit our authority in this area and is a prescription for litigation to determine jurisdiction. Our suggestion would be to take out those words "in any other act."

The proposed incorporation authority may potentially allow for creative public-private partnerships in order to finance infrastructure. In addition, revenue sources such as toll highways and general area rating are a move in the right direction. These areas will be crucial in moving forward, and we therefore strongly urge the government to act quickly in developing regulations under these sections. However, until the regulations are developed, we don't have the crucial details. We need to really comment.

With respect to areas we are concerned about, we'll begin with the terms "lower tier" and "upper tier." In our view, those terms suggest a hierarchy of municipalities which we think is inappropriate. We think the legislation is attempting to treat both local and regional municipalities on an equal playing field, or, if it's not, then it should be. That terminology suggests a hierarchy which shouldn't exist.

With respect to spheres, the powers contained in earlier drafts of the legislation have been reduced from 13 to 10 spheres. One of the former spheres, economic development, has been scaled back to economic development services, which is really more of a power than a sphere. In addition to scaling back the scope of the sphere, the powers under economic development are limited to acquisition of property and dissemination of information. Given the important role municipalities now play in economic development, it would have been far

preferable to leave that sphere of jurisdiction more broadly described. We're not sure why that was done.

Local municipalities can incorporate community development corporations. For example, Burlington has a Burlington Economic Development Corp. However, the region of Halton will now be given exclusive jurisdiction over the dissemination of information. That is exactly what our economic development corporation does: it disseminates information. The legislation would appear to preclude our carrying on in this fashion and appears to be getting our region into a whole new area of business. They are currently not disseminators of information for the purposes of economic development.

In this respect, we would ask that the region be given non-exclusive authority in this particular sphere. That is simply a reflection of the current state of affairs on the ground, and I don't think the region would disagree with that. In an earlier staff report from the region they also noted this very concern.

Additionally, other spheres formerly in the legislation are now entirely omitted. The former spheres, natural environment and nuisance—noise, odour, vibration, illumination and dust—are now missing and relegated to comparatively limited powers under the legislation. These are both areas where municipalities have a very significant role to play and their removal as spheres is disappointing.

The powers within the spheres are given to the regions and area municipalities. In some cases, the regions are given exclusive authority over powers within a sphere. Our first concern is that this opens up a number of areas in which regions have not been involved; for example, recreation. That area generally has been the domain of the local municipality. Under the proposed legislation, the regions can now move into that area and its bylaws will prevail.

If the intent behind the bill is to treat all municipalities the same, then the powers within the spheres should be equally available to both regional and local governments. The provisions in the bill giving exclusive authority to regions and dictating that regional bylaws prevail is rife with opportunity to cause friction between regions and local municipalities. This is most unfortunate, in our view.

Finally, in relation to the spheres, it is possible that because the bill refers to upper-tier municipal bylaws prevailing, the regions can use their bylaws under the spheres to avoid the transfer-of-service provisions.

Under licensing, the bill may restrict the areas over which municipalities currently have authority to license. There are three general areas in which municipalities can license: health and safety, nuisance control and consumer protection. This means that municipalities will have to reconsider the existing bylaws and possibly restrict the areas over which we license. In order to ensure that municipal licensing authority is not more restrictive than what is currently permitted, a fourth heading should be added, in our view: "community and public interest."

In addition, the bill will require municipalities to justify in bylaws every condition to be attached to a licence.

We find that to be onerous. We don't see other levels of government doing that. For example, if you get a driver's licence or a hunting licence, you don't see every condition of the licence attached to the licence.

The tax and finance areas of the bill may well lead to some real problems. Of particular concern to us is the matter of the interim levy. Municipalities have in the past based interim levies on 50% of the assessment in the previous year, where now the interim levy is based on 50% of the taxes from the previous year. This seemingly innocuous change would mean that, in 2001, 856 properties in Burlington would be left out of the potential tax revenue to be raised through the interim levy. This may well put additional pressures on our cash flow and result in previously unseen financing costs.

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From a taxpayer's perspective, it causes an imbalance in the tax bill. A tax bill under the old system works out at a fairly even split, say, an interim bill of \$1,500 and a final bill of \$1,500; whereas, under this legislation, you could well see an interim bill of \$200 and a final bill of \$2,800. Again, we are not sure what the motivation was for that change. We think the current system of basing the interim levy on last year's assessment is preferable to what's in the legislation.

Another similar area is the preapproved tax bill form, which you've probably heard lots of complaints on before, but given that I'm here, I'll just complain about it again. We think it is micromanaging.

With respect to the lame-duck council, section 275, an additional four weeks is added to the time during which council is unable to make decisions by moving the lame-duck period back to nomination day from voting day. We are not aware that there were a lot of problems with councils doing things in that period. But we think, particularly for large municipalities, the restrictions you've put in are very onerous and they're not very businesslike for a city like Burlington or particularly for bigger cities like Mississauga or Toronto. For them not to be able to hire or fire an employee for a period of four weeks is simply onerous. It is not conducive to the municipality doing business effectively, in my view.

With respect to section 130, we are disappointed with the rewording of the peace, order and good government provisions, the old section 102 versus the new 130. The removal of the references to morality of residents likely neutralizes the Supreme Court of Canada's decision in the Hudson pesticide bylaw case. That case was based on very similar wording to our old section 102. By changing the wording, there seems to be a growing consensus that we will not have the power to regulate pesticides as under that Supreme Court of Canada decision. We object to that.

The city of Burlington will be submitting a comprehensive report to this committee. We are appreciative of the many positive features of the legislation. However, we have some very real concerns about some aspects of the legislation. We see it as giving pre-eminence to regions over local area municipalities. We would have

preferred that the original spheres of jurisdiction remained.

Of particular concern to Burlington is our apparent loss of power in the area of economic development. The licensing and lame-duck council provisions are cumbersome and more restrictive than the current state of affairs. The section on taxation presents some real problems for us. Finally, we are disappointed that the province appears to be removing from us the power that the Supreme Court of Canada conferred in the Hudson decision. I thank you very much for listening patiently.

**The Chair:** Thank you. That affords us a strict one and a half minutes per caucus. This time we'll begin with Mr Prue.

**Mr Prue:** OK, one and a half minutes; let's deal with the Hudson-proofing municipal bylaws. I'd like you to expand a little bit on this. Peace, order and good government provisions have been taken out. I'm not familiar with what 102 said. How is 130 changed from 102?

**Mr MacIsaac:** Nancy can probably supplement my answer, but the very basic, simplistic reply to your question is that there was a specific set of wording in the Quebec legislation which we also had under the old section 102 of the Municipal Act. By changing that wording, we think it likely nullifies the applicability of that decision to municipalities in Ontario.

**Mr Prue:** The legislation here does say that it is related to the health, safety and well-being of the inhabitants, which would surely capture that. But if not, I'd just like to know how much stronger the other one was.

**Ms Nancy Shea Nicol:** The other one included morality provisions as well. That has been deleted from the new section 130. I think the second limitation that we see is the inclusion of the words "in any other act." Under the existing legislation, basically municipalities are precluded from enacting in those areas if there's a specific power in the existing Municipal Act. Now that would include any other form of provincial legislation. Whereas now you'd go through an analysis that would look at constitutional conflict of laws, that has been precluded, in our estimation, in the proposed legislation.

**Mr Ernie Hardeman (Oxford):** Thank you very much for the presentation. First of all, just very quickly, the interim tax billing issue seems like a very innocuous change and yet it would seem rather strange that if last year I had a vacant lot, my interim tax bill this year will be half of the tax bill of a vacant lot instead of half of a \$200,000 home. We appreciate that and thank you.

Again it doesn't seem like much, but the one I wanted to get your comments on is the upper- and lower-tier municipalities and single-tier municipalities and the problem that creates with the appearance that the upper tier has authority over the lower tier. I think I can accept that; not accept that they have, but accept that that's the appearance of it. As we look at the two-tier municipal government, in every case, at one point in time, we have a problem with the jurisdictional issues, whether the lower tiers agree with the upper tier and whether they don't. For some reason, we don't seem to be able to solve

that problem when the representatives from the lower tier go to the upper tier and do their voting. There seems to be a discrepancy there. We need to clearly define who's responsible for what. Do you have any suggestions on how you would accomplish that without the appearance that there is presently in the act? Do we just take out the two words and more clearly define the responsibilities?

**Mr MacIsaac:** From a purely aesthetic point of view, if you just called them regions and local area municipalities or something like that, that would be a step toward removing that appearance. Frankly, in terms of getting down into the substance of things, we are dancing as fast as we can on this legislation in terms of developing a reply. I don't think we have all the answers for you today. But we will continue to work on this, and hopefully you would continue to be receptive to suggestions.

**Mr Hardeman:** I just wanted to point out that we could consider calling them regions, but then we would have 26 counties not covered. If we covered the counties, then the district of Muskoka would no longer be covered. So we would have to have all the words in every part of the legislation. It does create a bit more of a dilemma than one would first envision.

**Mr MacIsaac:** You could consider renaming counties and districts as regions or calling regions counties. I don't think it matters. The connotation of upper and lower tends to give an appearance that I don't think you're trying to do, but it does.

**Mr McMeekin:** Your Worship, I appreciate your comments, particularly those related to the region or local potential for conflict and the issues of business development. I would suggest, just listening to the answer, that maybe some segue in the legislation, a statement clarifying the specific point, might preclude the need for a name change. I'm picking up between the lines what I'm sensing is a desire for maybe some more time to look at this bill. Could your municipality use some more time to look at it? Representing a significant portion of your wonderful city, specifically I'm concerned about the morality aspects, particularly in the Aldershot area. Could you comment on having more time and what you'd like to see on the morality side?

**Mr MacIsaac:** On the time issue, we wouldn't object to some more time, although the last time we asked for more time we got three years, which would be too much more time.

**Mr McMeekin:** So you weren't looking for that much.

**Mr MacIsaac:** No, we were hoping for less time than three years. Certainly if the process was slowed somewhat, without derailing it, that would be our first choice. Maybe Nancy can comment further on the morality issue.

**Ms Shea Nicol:** With respect to the morality provisions, there has been an attempt by this proposed legislation to encompass it in other areas. You've beefed up the public nuisance provisions, for example. Our concern is that to some extent those provisions may be somewhat illusory in the sense that the way in which the

legislation is proposed, it would give municipalities a fair bit of anticipatory power. While that seems on its face to be a good thing, the question is, will a court uphold that legislation in the end?

On the one hand, you've attempted to build in alternative provisions. But I'm not too sure in the end it is going to give the municipality any more teeth.

**The Chair:** Thank you for coming before us this morning. We appreciate it.

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#### BRANTFORD POWER INC

**The Chair:** Our next presentation will be from Brantford Power Inc. Good morning, welcome to the committee. Please proceed.

**Mr George Mychailenko:** Good morning. My name is George Mychailenko. I am CEO of Brantford Power. I'm here representing our company to bring something to the attention of the panel, an issue we feel needs to be addressed in the new Municipal Act. You may be aware that the city of Brantford, like other municipalities in Ontario, has been required by the Electricity Act to incorporate its municipal electric utility pursuant to the provisions of the Electricity Act. In our case, the city incorporated three companies: a holding company, Brantford Energy; a regulated company which is Brantford Power, ourselves; and an unregulated retail company which is Brantford Hydro. The city of Brantford owns all the shares of the company in Brantford Energy. In turn, Brantford Energy owns the shares of the other two companies.

We are an incorporated company like other private companies that exist in Ontario today. These companies require infusion of funds in order to finance expansion of their systems. To do so, they borrow money from banks or obtain funds from their shareholders. It is our position that the shareholder should be able to deal with our company as any other shareholder in the province of Ontario who has a wholly-owned company. The Municipal Act prevents this relationship with our shareholder. As you know, banks and other commercial lending institutions routinely request shareholders to guarantee when approving loans for corporations. This puts our corporation in a completely different class from other businesses borrowing in the province.

The problem is simply with section 111 of the current act and section 106 of the new proposed act prohibiting municipalities from assisting any commercial enterprise, including your own subsidiaries. This means that no matter how dire the need we have for cash, the city cannot give the energy corporations any additional money or guarantee their borrowing. While we understand the continuing need for municipalities to be subject to the antibonusing provisions of the act, we request that these provisions not apply to the municipally owned electrical utilities which are wholly owned by the municipality.

We learned the social housing corporations, which were established pursuant to the Social Housing Reform

Act, 2000, are not subject to similar constraints. Section 23 of the act expressly stipulates that they are deemed not to be commercial enterprises to which section 111 of the act is applied. It is our request that the government consider including within the new Municipal Act a similar provision for electrical utilities to that contained in the Social Housing Reform Act. Thank you.

**The Chair:** That affords us lots of time for questions. We've got about four minutes per caucus.

**Mr Norm Miller (Parry Sound-Muskoka):** Since we have lots of time, perhaps you could explain this problem a little bit more for us.

**Mr Mychailenko:** Specifically we, as a corporation, need an infusion of money. The easiest place for us to obtain these funds is from our shareholder, which is the municipality. We originally started out in a deficit position when the new Electricity Act was incorporated. That isn't similar to a lot of utilities. A lot of utilities were actually at the other end of the spectrum financially. We are in a position where we need an infusion of funds in order to expand our system. This means that we have to go out and borrow money from banking institutions or our shareholder. Our shareholder is quite willing to provide these funds for us and loan them to us, but unfortunately, due to the antibonusing provisions of the act, that's prohibited.

**Mr Kells:** I'm trying to get a little bit of a grip on your specific problem. I did mention it to the honourable member Dave Levac. It would be helpful for the government side to get a better grip on your specific—and I know that the honourable member will carry the message to us. After today is over, I know I'll probably receive something in writing and we will be able to make a specific reply back through the honourable member to your corporation.

**Mr Levac:** I'll dovetail into that. Mr Kells was kind enough to ask me for a situation. To clarify and make it very simple, section 106 prevents you from going to your shareholder to get money to run your company, and what you're asking is for the permission or the removal of the legislation that stops you from doing that, to do what any other corporation would do, which would be to go back to their shareholder and say, "We need more money to make it a viable company."

**Mr Mychailenko:** Exactly.

**Mr Levac:** To the offer that Mr Kells gave me, I will definitely be bringing that situation very clearly to the government side. Mr Kells has made it very clear that they would be open to trying to get a handle on and understand the situation very clearly. I'm convinced that if it proves to be what we just said, the government would be very interested in allowing the shareholder to lend its own company money in order to be a viable corporation. Unless there are other issues, and we need to have those clarified so that we would open a dialogue for both the municipality—because I understand that not a lot of municipalities have gone to the length that Brantford has in owning its own power.

**Mr Mychailenko:** That's correct, yes. We would clarify that for you if you're interested.

**Mr Levac:** Great. We will open that dialogue and make sure the government side understands it. I note for the record that Heather Wyatt is here. Heather, could you give us your title and what you do for the city of Brantford?

**Ms Heather Wyatt:** I'm the executive officer for Brantford Power and I'm also the secretary to the boards of the three companies that were incorporated as the result of deregulation of the electricity industry.

**Mr Levac:** And because of that, the relationship with the municipality is such that somebody's participation has allowed the municipality to take this corporation on, if that's correct?

**Mr Mychailenko:** That's correct.

**The Chair:** To the third party.

**Mr Prue:** My question relates again directly to Brantford. Section 106(2)(d) says, "giving a total or partial exemption from any levy, charge or fee." Does the city of Brantford at all give Brantford Power any exemption on the taxes, any reduction? Do you pay any taxes?

**Mr Mychailenko:** We are obligated to pay property taxes under the Electricity Act. The property taxes flow to the provincial government to pay down the electrical debt. These things are flowing toward the provincial government, not with regard to the property tax issue.

**Mr Prue:** OK, so the property taxes that are levied don't go to the city of Brantford.

**Mr Mychailenko:** No, they don't.

**Mr Prue:** Are there any other charges or fees that the city of Brantford either collects or does not collect from you? I'm trying to understand the relationship.

**Mr Mychailenko:** Yes, there are a number of charges and fees. For example, there's a loan which was established between the company in its initial forming, which the municipality owns. This was done with all the municipal restructuring within the electrical industry. This was done, but because of our financial position, the city is not collecting on those interests because, simply put, we just can't afford to pay them. The city has forgone those charges with us, but we still need additional funds to expand our system. That's the problem we are at right now.

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**Mr Prue:** I trust I have enough time. What will happen, what kind of consequences do you think will happen to Brantford Power, should this act remain as it's written?

**Mr Mychailenko:** The problem we're going to run into is that due to our cash flow problem—and that's what I alluded to originally, that Brantford was actually in a loss position going into the restructuring of the electricity market. Since the thing was prolonged quite a bit, our loss just continued to be there. The problem we're running into now is we're trying to come out of this situation, and with the Ontario Energy Board allowing us rate increases as we move forward through this electricity restructuring program we will eventually come out of this, but what we need is some infusion of cash short-

term per se to get us past our deficit position that we're in right now.

**The Chair:** Thank you both for coming before us here today. We appreciate your comments.

## CANADIAN AUTOMOBILE ASSOCIATION OF ONTARIO

**The Chair:** Our next presentation will be from the Canadian Automobile Association of Ontario. Good morning and welcome to the committee.

**Mr David Leonhardt:** Thanks very much for, on this short notice, giving us the opportunity to comment. I think most of you know who we are as CAA, but just to summarize, we represent about two million motorists in this province. We have a long tradition in the province of working for both mobility and safety, among other motoring needs.

We should begin by congratulating you for getting something going on this after, I guess, several attempts certainly in the last three or four years I've been in Toronto working in this position. I know there were a couple of attempts to get the Municipal Act updated, and it's long overdue. By government standards, this particular attempt has gone through at what I would call lightning speed.

There's no one who knows better, though, the double-edged sword of moving fast. Our members of course want to get from one destination to the other as quickly as possible, and at the same time as safely as possible. One of the concerns we do have is that the speed hasn't left the time for consultation on one particular area—probably on others, but there's one that I do want to raise, and that's section 40 on tolls. The reason the speed is of concern is because this is brand new and there hasn't really been the opportunity to have the kind of public discourse there needs to be when you're looking at this kind of change.

It's very different, by the way, tolls in the municipality versus tolls on a provincial highway such as Highway 407, which do get a lot of very public debate. One of the things you would find if you did throw this section open to some public discourse is that motorists feel they're paying enough already with almost \$4 billion paid to the provincial government and almost \$3 billion to the feds. Only \$1.5 billion of all that is spent on roads, and all of that from the provincial level, none from the feds. But that's still just a small fraction of what we're paying in direct motoring fees.

Tolls can also be particularly, more so in a municipal context than a provincial context, very much a punitive tax—more than a tax; an effort to remove people from their driving privileges within a city. We've seen that in some of the cities. Some of the municipal councillors would like to levy tolls on the entire downtown areas of a city in an effort to force people out of their cars, whether transit is an option for them or not. Ultimately it could kill the downtowns of some of our cities, so there's a little concern about that.

Last year and the previous year, we surveyed our members on the issue of tolls generally. Only 29% approve; 54% said they disapprove of tolls. It's not something that you will find a lot of popularity on.

That being said, we're realists. We know that if the government has chosen to put this in, I'm unlikely today to be able to convince you to strike it, which would be our first choice and strongest recommendation. But given that there hasn't been a great amount of discourse and given that this is something that is going to touch people very closely in their communities and that the Municipal Act has a long shelf life before it's likely next to be amended, we would like to suggest that if you do keep section 40 in, a couple of additional provisions be added. This is just from a perspective of accountability and ensuring that as municipalities come to the government for authority on individual roads—because that's what the section says, that the municipality may designate and operate and maintain a road as a toll road, but only with a regulation for that particular road by the government.

So the two provisions we would suggest are, first of all, that any provincial regulation pertaining to a municipal toll highway be passed prior to construction of the lanes that would be allowed to be tolled by the regulation. This would ensure that only new construction is covered, so that a city can't apply and some future government just give a blanket approval either for any road that they come forward on or for an entire downtown area.

Second, we recommend that there be an official call for public input as part of the regulatory process, that it be written into the legislation, and that that call go both to the residents of the municipality as well as to anyone else living within a commuting distance. We're not defining that; we'll leave that for the government to define. But it's so that before a given road is made a tollway—Red Hill Creek Expressway, for example—those people who would be affected by that particular road have the opportunity, and a public opportunity, not just interest groups such as us and the others here but that the people actually have an opportunity to have some input.

Given that this is a very brand new provision and that roads are very local in nature, especially municipal roads, we would respectfully submit that if the government in its wisdom chooses to keep section 40, those two provisions be added.

Thank you very much for hearing us.

**The Chair:** Thank you very much for your comments. That has afforded us about three and a half minutes per caucus for questions. This time we'll start with the official opposition. Mr McMeekin.

**Mr McMeekin:** I have no questions, Mr Chairman.

**The Chair:** Mr Kormos.

**Mr Peter Kormos (Niagara Centre):** Thanks for that submission. I guess I'm one of the 54%, because I am a CAA member. When you drive a seven-year-old pickup truck, you should be a CAA member.

**Mr Leonhardt:** Thank you.

**Mr Kormos:** You're suggesting—I want to be clear about this, because I agree with your proposal—that no

existing highway would ever be designated a toll road by the municipality, with the participation of the government by way of the Lieutenant Governor in Council?

**Mr Leonhardt:** Exactly. The way the wording is right now, on the one hand it's very stringent. Municipalities cannot do anything without the provincial government saying so. There's that control, but there's no stipulation at all from the provincial government perspective. It is very much a blank cheque. Who knows what some future provincial government will decide to do, or this government? We don't know down the road, as things progress and people change. We know there are some interests that would like to see entire downtowns tolled in the assumption that that will force people out of their cars and into transit. It's a false assumption. It's likely instead to kill downtowns and leave some people without options for travel, and we think incentives and transit funding are probably going to be better options rather than tolling an existing road.

**Mr Kormos:** Thank you.

**Mr Prue:** Just one question, because again this is such a huge bill, and in my reading of this I didn't catch it first time round. You are saying that new highways potentially could be, but existing highways cannot. But some of the highways have just been downloaded to the municipalities. I'm thinking particularly of the west end of Toronto. Highway 27 and I guess the Gardiner have now come under municipal jurisdiction.

**Mr Kells:** Right through my riding.

**Mr Prue:** Yes, in your riding.

One of the councillors in the city of Toronto, Howard Moscoe, wants to set up and has been quite vociferous and vocal about setting up tolls on there. I didn't see this as sort of allowing that, but is that what you're afraid of?

**Mr Leonhardt:** We're not keen on tolls anywhere, as I pointed out. If I can use a different example, on the Don Valley Parkway, there was a proposal before Toronto city council that would toll new lanes.

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We have a big struggle with this and our members do too. We need the extra capacity; we don't like tolls. In the end, there was the possibility it could have been an interesting option, but unless there is some stipulation in the act to that effect, that proposal could have put tolls on all the lanes, which I think would have made the decision as to whether it is something we should support or not a lot easier, because our members would not have seen that as reasonable, given that they'd already paid for that construction.

**Mr Raminder Gill (Bramalea-Gore-Malton-Springdale):** I'm sure you do international surveys. How many countries do charge tolls versus countries that don't charge tolls?

**Mr Leonhardt:** I don't have any international surveys of how many charge tolls in cities. There are different kinds of restrictions within municipalities. Singapore is a good example where you have to have a different licence plate—and it is very expensive to buy those licence plates—I think it is odd-even, or different days of the

week, to get into the centre of the city. But Singapore is the kind of society in which you go to jail if you spit or chew gum on the subway. I'm not sure that's the society that certainly our members see Ontario becoming.

**Mr Gill:** I do know from experience that most of the countries do charge a substantial amount of tolls. Is that your experience as well?

**Mr Leonhardt:** Our members tend to drive in Canada and the United States. There are several sections of the United States that have tolls but not generally on municipal roads. These tend to be interstates and long-distance commuting routes, similar to the 407 perhaps. What is being proposed in this act would allow for—and I'm not saying it is necessarily going to happen, which is why we think there should be the stipulation to ensure it doesn't—a municipal government to say, "Hey, we'd like to designate all the roads going into downtown Toronto, or downtown Brampton, or downtown Hamilton, as toll roads, because we think that will force people on to buses or subways."

**Mr Gill:** In one of the surveys you had 54% who don't want the tolls and the rest do. If you ask people, "Do you want the tolls or do you not want the tolls?" generally speaking, the majority would say, "I don't want tolls." "Do you want higher taxes or lower taxes?" "I don't want higher taxes; I want lower taxes."

**Mr Leonhardt:** With respect, motorists are already paying roughly four or five times as much between the federal and provincial government as they're getting from those levels and roads. There is tax room if the government wished to use it. When I say the "government," I should say the "governments," because both the federal and provincial governments are collecting those fees.

**Mr Kells:** Following up on Mr Gill's comments, obviously I agree that if you ask somebody if they want to pay an extra tax of some kind, they're going to say no. I'm surprised it didn't ring up a higher number than that. I do find it interesting in the discussion with the third party member, where we talked about tolling entrances into the city of Toronto specifically. When it first came up in discussions, I found it somewhat appalling. It seems to me it is like a medieval town. It is like bridging the place and then you pay to get in and you pay to get out. I for one, just a personal comment, can't see that ever happening, but in the scheme of things in municipal politics, maybe anything can happen.

I somewhat agree with you that if a municipality is going to do it at all, it must be on a new road. But I think the new lane proposition, if that be the case, has a great amount of validity. It is quite possible to make that work in any kind of well-used stretch of road. We as a government do commend the previous government for building the toll road. We have gridlock, as everybody knows, all over particularly 905, if I may use that description. If it wasn't for that toll road, I don't know where we'd be. We will take your two suggestions in for discussion.

The public has normally plenty of input into this kind of process simply because it would be a brave gov-

ernment that dared do something as punitive as this may seem without a great deal of discussion. I don't think it is a transparency problem. I don't think it is a problem of haste. I would think that it would be an act of folly to try and get too expansive with tolling.

Just to finalize that, though, as you pay tolls as you travel around other jurisdictions outside of Canada, it seems to be what has got the infrastructure built and running. Possibly we have to face up to that as taxes dwindle and the amount of money that's being placed in infrastructure seems to dwindle in relation to the other costs that governments face. I'm not asking a question. It is just comments in relation to your two points.

**Mr Leonhardt:** I certainly appreciate that it's hard to imagine this could ever happen, that the entrance to a whole downtown would be tolled. At the same time, I would find it hard to imagine that you would have highways—my mother-in-law lives in Gatineau. I often go up to Ottawa and have to cross through the city. You literally have to weave through city streets, because the highways on the two sides of the river don't connect. You would think that could never happen again. No one would actually plan for something that ridiculous, and yet that's what some people, a lot of people, are thinking of maybe doing in Toronto: tearing down the expressway and forcing all that through traffic to weave through city streets. Don't underestimate the possibilities that can happen, please. We respectfully suggest to the committee, if the committee agrees that this is something we would not want to see happen, simply put the provisions in to ensure that down the road—

**Mr Kells:** If I may, just a final comment. It is sort of a vision that the city of Toronto seems to be putting itself through. Visions are one thing. Planners love visions and we pay them big money to propagate visions, but visions have to be paid for. I for one can't understand how that possibly could be financed.

**The Chair:** Thank you very much for coming before us here this morning.

#### ST CATHARINES ASSOCIATION OF CONCERNED CITIZENS

**The Chair:** Our next presentation will be from the St Catharines Association of Concerned Citizens. Good morning, and welcome to the committee.

**Mrs Samantha Phibbs:** Thank you for the opportunity to present our case to this committee today. Our presentation will focus on section 433 of Bill 111: closing premises, public nuisance. I feel I need to tell you a little bit about us. We are not an easily recognized group. But I do represent the St Catharines Association of Concerned Citizens Inc. We are a rapidly growing organization—

**The Chair:** Forgive me. I had hoped you would start off by introducing yourselves for the purposes of the Hansard reporter.

**Mrs Phibbs:** Oh, sorry. My name is Samantha Phibbs and this is Carolyn Toth. I am the president and she is the vice-president.

We have a current membership of more than 300 individuals, and we are not just speaking on behalf of St Catharines. We are also affiliated with other resident groups from numerous municipalities: Guelph, Kingston, London, Hamilton and Waterloo. We were formed as a result of the escalating problems with the proliferation of illegal rooming houses in our residential neighbourhoods. Absentee landlords are buying and/or building single detached or semi-detached dwellings that were meant to house a single family, or three or four individuals—for example, a 1,000-square-foot three-bedroom bungalow—and retrofitting it and renting to anywhere from five to 12 individuals, usually students. This is a popular form of student housing. If you think back to the municipalities that we are linked with, they are all homes of universities.

Our mission statement and principal objective are as follows: to promote the creation and maintenance of a peaceful, safe and enjoyable residential environment for the residents of the city of St Catharines and the elimination of the current and possible future difficulties for many residents in St Catharines by troublesome rooming houses, lodging houses and/or boarding houses.

We believe that section 433, closing premises, public nuisances, can give municipalities the power to help residents achieve their goal and your stated objective of a peaceful, safe and enjoyable quality of life for the residents of Ontario. As stated in this section, these illegal rooming houses have a detrimental impact on the use and enjoyment of property in the vicinity of the premises. In the bill it states some examples of impact. I'm just going to go through those and how they relate to these dwellings.

1130

**Trespass on property:** parties with so many people that they spill over on to neighbours' property, destroying lawns and gardens. Some partygoers have gone as far as to urinate, defecate and vomit on neighbours' lawns. This isn't a one-time experience or an isolated incident, but it's to be expected when you have more than 100 people in a small home with one or two bathrooms. The mornings after these parties the whole neighbourhood must pick up garbage and beer bottles that are strewn all over their private property. We're even sweeping the streets and sidewalks of broken glass so that young children and others will not be injured.

**Interference with the use of highways and other public places:** if a family or any three or four individuals live in a home, parking is rarely a problem. If the house is operating as a rooming house with six, eight or 12 individuals and they all have cars, where do they park? Until this past spring, often they parked on front lawns, but St Catharines and other municipalities now have bylaws prohibiting this. Many cars park on both sides of the street, boulevards and even sidewalks, denying access to pedestrians. So many cars are parked on our residential

streets, it's effectively restricting traffic, so that if emergency vehicles are needed, they may not be able to reach the area because they cannot get past the parked cars. The same can be said of school buses and snowplows in the winter. The excessive number of unnecessarily parked cars on city streets creates a very serious safety issue.

**An increase in garbage, noise, or traffic or the creation of unusual traffic patterns:** garbage—I'm just going to pass around some pictures while I'm talking here. Unfortunately we couldn't afford to make copies for all of you, but the pictures speak for themselves. In September, December, January, April and August, our streets are lined with mountains of garbage, not properly contained, put out days, sometimes weeks before pickup day and exceeding the allowable amount. When an individual rents a room in a house, that person does not assume responsibility for looking after the entire house, and this results in a lack of snow removal, lawn maintenance, gardening, general cleaning, regular maintenance and garbage removal. Some of these homes put numerous very large items of furniture, such as chairs and couches, at the curb each year. It is no surprise that our local landfill site is closing; it is full. Many of these houses use what you and I would classify as garbage as furniture and place this furniture in the front yard—couches left out for weeks, even in the rain, broken-down La-Z-Boy chairs etc. All of this garbage has also caused an increase in the vermin population.

**Noise:** doors slamming, brakes and tires squealing, cars honking, taxis honking, yelling, often obscenities, loud music and noise at all hours. The sheer number of people in these homes, which were designed for small families, increases the noise pollution.

**Traffic:** once again, the sheer numbers of people living in these homes, and therefore the number of cars, increases the traffic in neighbourhoods where the driveways and roads were built for families with one or possibly two cars.

Activities that have a significant impact on property values: many of our members have expressed deep concern and fear that their large investment in their property has significantly declined over the past few years. Who would want to buy a home next to a rundown, poorly maintained rooming house with a weed-choked, garbage-strewn lawn? Meanwhile, the absentee landlords are renting an 1,100-square-foot home, originally a three-bedroom, to seven students, at \$350 each, for a total of \$2,450, way above the fair market rental price, which would be between \$800 and \$1,100 a month. They're not doing this as a favour to the students. These rental properties are a business venture in residential areas, and these landlords are making a huge profit but are still paying the same property taxes as the residents.

**An increase in harassment or intimidation:** many elderly residents are actually afraid to speak out for fear of identification and being targeted by tenants and landlords. Some residents have been threatened with physical and sexual assault as well as property damage. One

couple has had their backyard fences knocked down due to their neighbouring tenants roughhousing. Police intervention has been sought on numerous occasions, only after the residents have tried to reason with their tenants. Often this is followed by verbal assaults directed at those who dare to seek assistance from all available authorities. For example, the students said to one elderly couple, "This is a school zone. Students live here. Deal with it. Go back in your house and leave us alone."

Our community has a large aging population. These residents have worked hard to purchase a home, raise their families and support their community. Their single expectation is to live peacefully and with quiet enjoyment of their property. There is a feeling of intimidation and a loss of security in our own neighbourhoods.

Graffiti: in our neighbourhood, traditional graffiti is not a problem, but we must deal with another form. There are pictures going around. These are signs that decorate the outside walls, the windows and front lawns of many of these illegal rooming houses. Some of these signs are quite offensive. A few Christmases back we had a giant penis made of Christmas lights in a large picture window. Other signs include: "Open 24 hours" "Open" "Dope area"—there is a picture of that one—"Master-Card" "Visa" and lots of different types of alcohol advertisements and even ads for local bars. Many of these signs are illuminated. None of these signs are appropriate in a residential neighbourhood.

The premises we have described that exist in our neighbourhoods have caused a crisis. We feel that they fit the description of a public nuisance as detailed in Bill 111, section 433, on all levels. We want to be assured that the intent of Bill 111, section 433, closing premises, public nuisance, is to deal with all types of public nuisance, not just the obvious ones: crack houses and gang clubhouses. We ask that all nuisances be included. The illegal rooming houses in our neighbourhoods will continue to create a crisis, and their numbers are growing at an alarming rate. We need assurances that municipalities can and will be able to eliminate the crisis in our neighbourhoods.

I just want to add that in the package I handed out there is actually a list of these houses in our neighbourhoods. That list was updated two years ago. It was a lot of work to get to that list. I just put it in there to let you see the groupings. For example, Jacobson Avenue—they're in alphabetical order of the streets—is a small residential street. You can see from that list that there are numerous homes on that one street. We don't have one in a six-square-block radius; we have 150 in one ward in the city of St Catharines.

**The Chair:** Thank you very much for your interesting presentation. That leaves us about three minutes per caucus.

**Mr Kormos:** Thanks for bringing this here. I'd also ask the committee to note that in the material filed with you is a judgment of Judge Taliano of the Ontario Superior Court. It illustrates the difficulty that the city has faced attempting to prosecute owners of these

properties to date for what appeared to the city and its bylaw department to be prima facie violations of bylaws.

I also want to indicate that these folks—I've met with them numerous times both as a group and individually—are not NIMBY people. They acknowledge that students living in any number of locations—it is not the student living there that is, in and of itself, the problem; it is the nature of the accommodations. One can tour this community, this part of south St Catharines, just at the bottom of the escarpment, any day of the week, any week of the year, and readily identify the homes, the accommodations, the buildings, the premises that are being referred to.

My concern—and I put this to the parliamentary assistant, because I've read 433 very carefully. The presenters have made reference to the notorious intent—and I say that in the most appropriate use of the word—notorious purpose to which Bill 111 was drafted to apply. I have concerns because the language "public nuisance" may be considered to be so high a threshold by a judge, for instance, that it would be very difficult to meet that. In other words, "public nuisance" might require some broad-based public nuisance, a health risk, for instance, as compared to just a nuisance to the immediate neighbours, because it is acknowledged that people in north St Catharines are not impacted by the nature of this housing.

Other MPPs from similar university towns and every one I've spoken to have identified a similar problem in their communities. Nobody is attempting to drive students out of the community; on the contrary. Nobody is trying to do that. Students sometimes have unique lifestyles that some of them grow out of as they mature. But these people are living with this on a daily basis. The illuminated penis, the window display at Christmastime, would be cute perhaps, maybe, in a student residence, but it wasn't cute to the folks who had to take their kids inter alia past it on a daily basis.

1140

The police have been involved regularly. Inspector Dagenais from the St Catharines number 1 division has limited resources. The police find it very difficult. They'll attend if they have the resources. But again, they feel that they are handcuffed in terms of any effective enforcement tools.

I'm asking Mr Kells if he can please, before these committee hearings end, reflect on the issue that these folks have raised and be able to address this committee, or with ministry staff, as to whether or not this section would respond to the issue that's being presented. If not, then we should be talking about some—if the committee feels that this is the sort of scenario that should be dealt with in section 433, the committee then, I submit, should be considering some appropriate amendments to extend the scope of 433 so it does respond to this scenario.

**Mr Kells:** The honourable member's comments set up my answer very well. After I deliver this little answer, I think if you dig into the act you're going to be reassured. If there is some doubt after that, then again we would be happy to receive anything, in writing particularly.

Under section 128, public nuisances, it reads, "128(1) A local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances." Then subsection (2), "The opinion of council under this section, if arrived at in good faith, is not subject to review by any court." Finally, in section 129, "A local municipality may prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors."

If you take that section and put it into section 433, then we do believe that your municipality certainly has the ability to take some action, either specifically or generally, on your problem. I recognize your problem. You have ample proof. But also I think it is a fairly well documented problem in many towns that are lucky enough to have universities, from an economic point of view.

But if the honourable member—and if you have any other counsel, and I'm sure you have—feels that this in some way is not adequate, then I can speak for the government in the sense that we'd be very happy to review the situation, whether it needs a reg or it needs an amendment. But your point's well taken. The concerns of the opposition are well taken and we will be happy to respond to any further comments you might make.

**Mr McMeekin:** Just briefly, I too want to thank the presenters. It is great to see, in addition to the municipal organizations that come out and present, some grassroots representation. I know in my riding we have a number of ratepayer groups who are very concerned with the peace, safety and enjoyment of their communities.

By way of question to Mrs Phibbs, Samantha, directly, is it your contention that Bill 111 goes far enough and you're here to affirm it, or is it your contention that the bill falls short? If the latter, could you comment for members of the committee as to what specific changes you'd like to see?

**Mrs Phibbs:** The best way for me to answer that is, when I read this bill, I thought it had been written after I had done the report that I put in the package. The subheadings fit perfectly. It's describing exactly these dwellings that we're dealing with. I just wanted to make sure, as Peter said, that the intent was not just the obvious public nuisances, that it would be able—I am by no means an expert. This was a very difficult document for me to pick up, considering I got it Friday. I feel that the descriptions fit perfectly; I just want to make sure. I can't judge on my own as to whether it will be enforceable against these types of public nuisances.

**Mr McMeekin:** It is the kind of book you can't pick up once you put it down. I appreciate the answer because, as you went through your presentation, I was thinking to myself, as one who had gone through 433 with some care, that 433 was in fact speaking to most of the concerns that were being raised. But you're saying let's just take a moment to dot a few i's and cross a few t's and make sure that the obvious, from the community

perspective, which may not be the obvious from the legislative and regulatory perspective, is also covered off. Is that—

**Mrs Phibbs:** Yes, exactly.

**The Chair:** Thank you. I'm sure the folks at legislative counsel who craft these things will be disappointed to know both the Governor General's medal and the Giller Prize have already been handed out.

**Mr Hardeman:** I appreciate the presentation. This is more a personal question. The presenters presented a list of the addresses. Obviously, they know the city far better than I. I wondered if they also know the names of the students who are involved. One of them could be my son, and I'd want to be sure I knew that and that I could respond appropriately when he returns home. I just wanted to check that out because he does go to the university in that city.

**The Chair:** We'll leave it up to you to cross-reference the list.

**Mr Kormos:** Chair, if I may, to legislative research, because Mr Prue has pointed out that if a municipality were to have licensing capacity for these types of accommodations, could use that, I wonder if legislative research could, before the completion of the committee hearings, assess the licensing capacity in Bill 111 and advise us as to whether or not it would permit municipalities to license or contemplate licensing these types of accommodations. If it does, that would be yet another avenue. If it doesn't, then perhaps the committee would want to readdress that section of Bill 111 as well.

**The Chair:** I'm sure they will report back to you directly, Mr Kormos, and to the committee.

Thank you very much for coming before us with your very interesting presentation.

## CITY OF HAMILTON

**The Chair:** Now our final presentation, folks. There has been an addition to the agenda. That's the city of Hamilton. Welcome to the committee.

**Mr David Beck:** Good morning. My name is David Beck. I'm employed as assistant corporate counsel in the legal services division of the city of Hamilton, which essentially means that I am one of the municipal solicitors in the city. I have been asked to make a presentation to the committee today by the mayor of the city of Hamilton, Robert Wade. I have provided the clerk of the committee with the report which the legal services division has prepared for submission to city council. That report has not yet been considered by city council. It will be on the agenda for the meeting to be held this Wednesday, November 19. At this time the report contains the recommendations of staff only. I'd like to make that clear at the outset before I begin my remarks. We've also had input from our finance department on this report. But essentially it is the legal services division giving a more or less technical assessment of Bill 111.

I think I can very concisely take you to our overall conclusion about the legislation by directing the com-

mittee's attention to recommendation (a) on the first page of our report. We are recommending:

"That the mayor"—of the city of Hamilton—"be authorized to inform the Minister of Municipal Affairs and Housing that the city of Hamilton

"(i) supports the enactment of the Municipal Act, 2001, as a significant step forward towards the creation of a more mature and mutually acceptable relationship between the province of Ontario and municipalities."

There are essentially four main reasons why our office feels that this is a significant step forward for Ontario municipalities. To begin with, what Bill 111 will provide is a more contemporary legal framework that municipalities will be able to use to go about their responsibilities in delivering services to their communities.

1150

A key feature that we strongly support is the device of having spheres of jurisdiction set out clearly in the new act. We are a single-tier municipality, as members of the committee I am sure are aware, because of the amalgamation which took place on January 1 this year. We believe that the 10 spheres will, in a broad and liberal interpretation, give the city of Hamilton enough jurisdiction to fulfill its mandate to the inhabitants of the city.

We are also pleased with the recognition that municipalities require a clear statement that they have natural person powers, which is also set out in Bill 111. This removes a lingering degree of uncertainty when municipalities in Ontario attempt to exercise various operational or administrative functions. Frequently it is a question of looking through the provisions of the current legislation and trying to identify a specific paragraph or clause that says that a municipality may do this, may enter into this contract, may issue this sort of approval etc. That will put municipalities clearly, for the first time, on the same basis as any other business corporation or not-for-profit corporation in Ontario. We believe that is a positive element of the new act.

We also recognize the grant of specific powers in other portions of the act. Those specific powers identify areas of special interest such as noise, odour, the regulation of shopping hours and the regulation of smoking in public places. Those powers of course are subject to the limitation that the municipal bylaws that are passed under those powers must not, cannot, conflict with provincial or federal legislation. Again, speaking as a lawyer only, we recognize the need for that statement that those municipal powers are subject to provincial and federal legislation. We do recognize that there are matters of provincial or federal interest in many of those areas. We believe the municipality will be able to exercise those powers carefully and to extend the scope of its authority without running into conflicts.

A fourth element of the new legislation that we are pleased to see is the power that is conferred under section 203 for municipalities to incorporate a corporation. As other speakers have addressed the committee, this power will be subject to the development of regulations by the Ministry of Municipal Affairs in consultation with the

municipal sector. The former city of Hamilton, which was amalgamated this year, and the former regional municipality of Hamilton-Wentworth, which was also amalgamated into the new city, had responded to the Minister of Municipal Affairs in 1998 specifically requesting that the power to incorporate a corporation and related powers—the power to hold equity shares in certain types of corporations—be granted to municipalities.

The reason this was an important issue to the city of Hamilton and the former region was that it will provide a legal vehicle for municipalities to explore new types of joint ventures and public-private partnerships directed at obtaining alternative methods of providing services to its inhabitants. The city of Hamilton and the region were innovative, I believe, in developing arrangements with the private sector for the operation of our waste water and water distribution system and with developing an operating agreement for the operation of the John C. Munro Hamilton International Airport, which has been advantageous to the city. We are pleased to see that.

Moving away from those four fundamental features of the legislation, which we feel are positive, again from a technical-legal perspective, we are pleased that the new act will represent a consolidation of a number of pieces of municipal legislation in one statute. It is currently very difficult at times to correlate and to cross-reference different items of legislation between specific acts: the general Municipal Act and the Regional Municipalities Act. We do have the advantage now of being single-tier, but the exercise currently remains of finding your specific authority, so it will be all captured within Bill 111.

At this point, I'd like to extend a word of appreciation from municipal solicitors in my department for the thorough, patient and excellent process of consultation that we have enjoyed over several years with the ministry, and specifically with your legal branch: Elaine Ross and Scott Gray. I'm sure many other lawyers and policy people as well have been involved in this exercise. But they have listened to us extensively and always patiently to try to give us an act that we feel is more workable. It's well conceived. From a technical aspect, I feel it's well-drafted legislation.

There are some modest refinements that at this point we would still ask the standing committee to consider. In the area of open meetings, which is addressed in section 239 of Bill 111, there is one small change that the bill contains which would permit municipalities to hold a closed meeting, or a so-called in camera meeting, when it is dealing with the disposition of municipal land as well as the acquisition of municipal land. That will assist us when the municipality is involved in sensitive negotiations with private sector entities who are proposing to purchase land for certain purposes and they are providing financial information in confidence to us. The city of Hamilton clearly believes that the process of local government should be open and accountable, but we think that's a good balance to recognize the interests of private sector parties.

We would also echo the point that was made to you by the city of London earlier this morning: we would ask that the standing committee consider making the open meeting provision entirely consistent with the provisions of the Municipal Freedom of Information and Protection of Privacy Act, which, as was explained to you, currently protects the information of third parties in the financial and commercial area so that, when they come to a municipality and they're proposing some innovative arrangement to deliver services, some new contractual arrangement, council could properly proceed in a closed meeting to deal with that confidential information from its proponents. We believe that it is in the public interest, ultimately, to obtain the best possible arrangement for the municipality.

One thing that is echoed in our report, and I ask the committee if they could refer to paragraph (ii) of our recommendation, is that the council of the city of Hamilton earlier this year expressed its support for the Association of Municipalities of Ontario and the Municipal Finance Officers' Association of Ontario and requested that the province consider making municipalities exempt from the provisions of the proposed Public Sector Accountability Act, Bill 46. The city of London referred to this also in their submissions this morning. We would echo that request from AMO which is contained in their very recent press release. We believe in municipal accountability—it has been there for a long time and it will continue and will be expanded in Bill 111. We feel that there will be unnecessary duplication if we are also subject to the provisions of Bill 46.

Overall, in conclusion, the legal services department of the city of Hamilton is recommending to city council this week that it express strong support for the enactment of this legislation. We do thank the province for the opportunity to appear today.

**The Chair:** Thank you very much for your comments. That affords us two minutes per caucus for questions or comments. We'll start with the government.

1200

**Mr Kells:** I appreciate your presentation and the comments you made about the good things in the act and the fact that in general you support its provisions. You dwelled a bit on Bill 46, and we understand that. Some of us—and some of my comments are personal, as opposed to a government position—have wondered for some months now about the efficacy of Bill 46 and, as something that had undergone many exercises that we've undertaken as a government, whether Bill 46 really follows on one of those necessary evils of being the government.

Certainly the position of the government is that we do not want to create duplication and cause undue problems for municipalities, particularly well-run municipalities. It's safe to say in the environment that we are currently existing, in relation to the government, I would think that Bill 46 probably will be scrutinized with the thought of taking in the comments that we receive from the municipalities in particular. I haven't yet run into a presen-

tation, written or otherwise, from a municipality that could find too many virtues in Bill 46. I think it's safe to say that it might be a debate that comes down between the Ministry of Finance and the Ministry of Municipal Affairs. Having said that, that would indicate this will be reviewed thoroughly, I would believe, just from government policy.

**Mr McMeekin:** Thank you, Mr Beck, for your presentation. I would agree with Mr Kells on Bill 46, that it's hardly needed. Sections 299 through 302 are virtually lifted from Bill 46 anyway. So whatever deleterious effects Bill 46 has will be endemic to the bill, regardless.

That having been said, this report hasn't gone to council yet, hasn't been approved by council?

**Mr Beck:** No, Mr McMeekin. It will be considered in committee of the whole on Wednesday of this week.

**Mr McMeekin:** Do you have any comments at all, given the concern recently about the shortfall, fiscally, with respect to downloading, on particular around health, the ongoing concern about emergency measures: that there's nothing in this bill which addresses the downloading, there's nothing anywhere in this legislation which requires the municipality to have an emergency measures plan and that there's virtually no change to the taxing policies from a revenue perspective? Have you and the mayor had a chance to chat to about that yet? If so, could you comment?

**Mr Beck:** I can address Mr McMeekin's comment, but first, I haven't had an opportunity to review those aspects of the legislation with Mayor Wade. I have been in touch with our treasurer, and I know that our financial policy section has taken a very close look at the provisions of the bill. I'm sure they're aware of the concerns of the fiscal impact. At this point, they did not provide me with any strongly worded suggestions on how that should be addressed in Bill 111.

**Mr McMeekin:** There are no new taxing authorities here at all. Are you aware of that?

**Mr Beck:** Yes. I appreciate that.

**Mr McMeekin:** Are there any components of the legislation, given your financial review and your legal review, that you think are not operationally effective?

**Mr Beck:** Our analysis of the operational impact is that in general, municipalities will be able to carry on with the business they have been in. We foresee the potential of some additional costs because of the additional accountability measures that are in there. We foresee additional costs in the area of more requirements before licensing bylaws are enacted. There are restrictions on licensing fees that may affect the revenue that is gathered from those sources.

**Mr McMeekin:** So there are some burdens there?

**Mr Beck:** It appears that there may well be.

**Mr McMeekin:** Just finally, is there any concern at all that the provision for the development of municipal service boards only includes five of the 10 spheres?

**Mr Beck:** Since we're now operating under the single-tier structure in Hamilton-Wentworth, I haven't

been advised that that proposes any potential problems for us, quite honestly.

**Mr McMeekin:** There is, as you know, a lot of talk about the service board with respect to public utilities and some other areas.

**Mr Beck:** I do have to confess my ignorance at this point, Mr McMeekin, on that aspect. I haven't been provided with any information about what's happening with the utilities in Hamilton.

**Mr McMeekin:** It would be interesting to look at this report, once it goes to council, to see how it's amended. Thanks very much.

**Mr Prue:** I would make the same comment too, because most of what you have said about the bill is laudatory, and I think most of what's in the bill is laudatory. But you've not narrowed down any of the criticisms, really, of the bill. I'd like your comment, because we had an earlier deputation, His Worship Mayor MacIsaac, from Burlington. You talked about the natural person, what a great thing. I quote from his deputation: "The province retains the ability to regulate in every area where municipalities are purported to have natural person powers and to restrict that power, presumably if and when a municipality appears to step out of line. In addition, there are ... new restrictions that" did not exist in the past. "In my view, you need to give municipalities the flexibility they require to succeed in the modern environment even if that means ... you are also giving them the chance to really mess up." What he's saying is that the government is too restrictive in the natural person power. Do you not share that view? You're the first person I've heard from a municipality who doesn't, and I'm just wondering why.

**Mr Beck:** I can address Mr Prue's question, I think. I should emphasize again that I'm speaking merely today as one of the lawyers in the legal services division who deals with legislation on a daily basis. We recognize that the natural person powers are given the broad interpretation within those spheres of jurisdiction as well. The other powers are subject, of course, to provincial paramountcy, if you'd like to call it that, and that is the framework that municipalities have worked in since time immemorial. We feel that we can exercise those powers as fully as possible up to the limits of the provincial interests.

I'm not answering your question from a political or policy perspective. Whether that's wise—we feel this a step in the right direction and we can go further, even with those limitations. Our council may feel differently on Wednesday.

**Mr Prue:** I just want to be very clear, then. What you're giving us is a total legal position, as I understand. The mayor is not here to speak to this, nor are any of the members of council. Have they even seen this report yet?

**Mr Beck:** This report was distributed on Friday afternoon, so it would be in the hands of members of council at this time.

**Mr Prue:** But there's certainly been no chance to comment.

**Mr Beck:** Not at this point; not until Wednesday. So it may be that our recommendation will be revised by council on Wednesday.

**Mr Prue:** I would think it's quite normal and natural that they will make a number of changes to any recommendations or reports and we can anticipate those.

**Mr Beck:** It frequently occurs.

**Mr Prue:** I will wait and see if they have comments as well.

**The Chair:** Thank you for coming before us this afternoon, because it is now this afternoon.

With that, committee, we stand recessed until 3:30, back in Toronto, for consideration of Bill 90 this afternoon.

*The committee recessed from 1209 to 1537 and resumed in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair:** Good afternoon. I'll call the committee to order. The first item of business is the adoption of the report of the subcommittee, if I can have a volunteer, someone who wishes to read the report into the record and move its adoption. Mr Miller?

**Mr Miller:** I'd like to move the acceptance of the subcommittee report.

Your subcommittee met to consider the method of proceeding on Bill 90, An Act to promote the reduction, reuse and recycling of waste, and recommends the following:

(1) That the committee schedule clause-by-clause consideration of Bill 90 on Monday afternoon, November 19, and Monday afternoon, November 26, 2001.

(2) That any proposed amendments should be filed with the clerk of the committee by 4 pm on Friday, November 16, 2001.

**The Chair:** Any comments? Seeing none, I'll put the question. All those in favour of the adoption of the subcommittee report? It is adopted.

## WASTE DIVERSION ACT, 2001

### LOI DE 2001 SUR LE RÉACHEMINEMENT DES DÉCHETS

Consideration of Bill 90, An Act to promote the reduction, reuse and recycling of waste / Projet de loi 90, Loi visant à promouvoir la réduction, la réutilisation et le recyclage des déchets.

**The Chair:** Moving on to point number 2, clause-by-clause consideration of the bill.

**Mr Ted Arnott (Waterloo-Wellington):** I move that the bill be amended by adding the following section:

"Purpose

"0.1 The purpose of this act is to promote the reduction, reuse and recycling of waste and to provide for the development, implementation and operation of waste diversion programs."

**The Chair:** Do you wish to speak to it before I invite comments from other members?

**Mr Arnott:** Sure. The purpose of this motion is to add a purpose statement or purpose clause or preamble, whatever you want to call it, to the act. The purpose statement will help clarify the intention of the act, and it will establish upfront that not only does the act promote the 3Rs, it will also result in the establishment of sustainable waste diversion programs. It will clearly indicate that the act addresses more than just the blue box program.

**Ms Marilyn Churley (Toronto-Danforth):** I wish I had some government officials to write my notes for me. That was excellent.

**Mr Wayne Wettlaufer (Kitchener Centre):** You did have.

**Mr Arnott:** They do a good job.

**Ms Churley:** Maybe Ted wrote them himself; that's quite possible.

I support the intent of the purpose at the beginning of the bill. I think that's a good idea. However—and I don't know if this would be considered a friendly amendment to the amendment, but let me try—I would like to change the wording from "The purpose of this act is to promote" to "The purpose of this act is to require the reduction, reuse and recycling of waste and to require the development, implementation and operation of waste diversion programs."

I believe that we're now in a situation where we need an act to not just help promote, but to take a stronger role and have it actually require that these things be done. If it's not a friendly amendment, then I don't know what the procedure is. If you don't accept that, I guess—

**The Chair:** Actually, amendments can only be considered if they're in writing, Ms Churley. We have a somewhat soft deadline, but there is no such thing, unfortunately, as a "friendly amendment." All amendments are amendments, so if you wish to offer an amendment to this—

**Ms Churley:** So if I put this in writing now, I can present it a little later on?

**Mr Arnott:** There's a deadline, is there not?

**The Chair:** Unfortunately, the wording chosen in the motion was "should" as opposed to "must."

**Ms Churley:** We're talking about the first page?

**The Chair:** The original motion. The original subcommittee report.

**Mr Miller:** Yes, that's right. It says "should be filed." It doesn't say "must."

**Ms Churley:** Are we still talking about the purpose?

**The Chair:** Yes, we are.

**Ms Churley:** "To promote"—

**The Chair:** Right now, if you want to introduce a written amendment you can do that. Otherwise, once this issue is discussed, we have moved on and nothing short of unanimous consent would allow us to return to it.

**Ms Churley:** So if somebody else were to speak to this for a moment, I can very quickly do that.

**The Chair:** Looking for further comments.

**Ms Marilyn Mushinski (Scarborough Centre):** I do have a question, Chair. Is it customary to start a section of any act or bill with a zero?

**The Chair:** Actually what happens, once we are finished with all of the clause-by-clause consideration, is that legislative counsel goes back and renumbers all sections on the basis of any additions or deletions that are made by the committee.

**Ms Mushinski:** OK. Because I just don't think it looks very good to start the first paragraph of a very important bill with a zero.

**The Chair:** This would wind up becoming section 1, effectively, after royal assent.

**Ms Mushinski:** Thank you. I would question whether Marilyn's change from "promote" to "require" is a friendly amendment. It certainly sounds to me as if "required" is much more prescriptive and would probably require considerably more amendment throughout this bill, so I will not be supporting the amendment.

**The Chair:** Further comments?

**Ms Churley:** This will shake the world.

**The Chair:** I have received an amendment to the amendment. Since Mr Colle has just joined us, perhaps you would like to read it back into the record. Is this your only copy? You read it and then return it.

**Ms Churley:** I move that the wording of section 0.1, "Purpose," be amended to read:

"0.1 The purpose of this act is to require the reduction, reuse and recycling of waste and to require the development, implementation and operation of waste diversion programs."

**The Chair:** Everyone has heard the amendment on the floor. Any comments on the amendment to the amendment?

**Ms Churley:** If I may speak to the amendment, I believe that the intent of this legislation before us today should be to strengthen our commitment to making sure that reduction, reuse—may I applaud the authors of the purpose, by the way, for getting the 3Rs in the right order: reduction, reuse and recycling; that's very important. But I would like to see us put a stronger emphasis on our commitment to the reduction, reuse and recycling of waste. Therefore, I would like the purpose of the act to say that we require this to happen—the reduction, reuse and recycling—and to require the development, implementation and operation of waste diversion programs. It's simply a word change that indicates there's a stronger emphasis on making sure this happens.

**The Chair:** Further debate? Seeing none, I'll put the question on the amendment to the amendment. All those in favour? Opposed? The amendment to the amendment fails.

**Ms Churley:** Thank you for your indulgence.

**The Chair:** That takes us back to the motion by Mr Arnott. Further debate? Seeing none, all those in favour of the amendment? Opposed? The amendment carries.

Section 1 and section 2: any comments or amendments? Seeing none, I'll put the question. Shall section 1 and section 2 carry? Carried.

## Section 3:

**Ms Churley:** I have an amendment which I'll read into the record. I move that paragraph 1 of subsection 3(2) of the bill be struck out and the following substituted:

"1. That number of members, appointed by the Association of Municipalities of Ontario, that is one-half of the total number of members appointed under this subsection."

The reason I'm making this amendment is that we have to bear in mind, and we know, that the municipalities are carrying the burden of having to see these programs through. I believe it's only right, and I assume they'd support me on that, that they have 50% of the members on the board.

It's my understanding, from reading through the rest of the bill, that the government and some of the amendments before us today—and correct me if I'm wrong, but this is my understanding. Right now, the way it's configured, there would be more members from industry on the board than from municipalities and that there are other sections of the bill and amendments which would allow the government to appoint more members if those amendments pass. Again, if I understand correctly, as new industries are brought on stream, those which don't exist now but are brought on to come up with a plan, they too will be able to have a representative on the board. That's my understanding. That means that municipalities will fall even further behind in terms of having fair representation on the board. My amendment deals with that so that at all times municipalities will have 50% of representatives on the board, and we particularly don't want them falling behind as we see more people appointed.

**Mr Arnott:** Just in response, I want to thank Ms Churley for her amendment, although I think she overlooks the fact that the Association of Municipalities of Ontario's appearance and submission before this standing committee expressed overall support for the WDA, including their membership on the WDO board of directors. This membership resulted from extensive consultation by the ministry and through the voluntary Waste Diversion Organization initiative. The board membership primarily reflects those directly affected by diversion programs, specifically those that will be asked to pay fees. It also recognizes the number of positions with municipal stakeholders, as you've indicated, being four members.

**Ms Churley:** I don't know if a member of the government side or staff from the Ministry of the Environment could clarify for me my assumptions, from having read the bill and the amendments, about the makeup of the board. Can we have that clarified? Was I correct in my analysis of the existing—without the government amendments that have been put forward today, which could in fact appoint two other members, but as industry develops the plan and comes forward, then they too can have an appointee to the board. It seems to indicate there are more industry reps already, in my understanding, than

from municipalities. There can be more and more representatives coming on from industry, but there's no provision to make sure the municipalities keep up with those numbers. I'd like clarification on that.

1550

**Mr Arnott:** We have staff from the Ministry of the Environment here and from our legal branch. If you have no objection, we could ask someone to come forward to clarify that point for Ms Churley, if she wishes.

**The Chair:** If someone could come forward and introduce themselves for Hansard.

**Mr Keith West:** My name is Keith West. I'm the director of the waste management policy branch of the Ministry of the Environment.

You're correct in your assumption that the minister does have authority under the legislation, as proposed, to appoint additional members if she chose to do so related to the addition of a new program. There's also a provision within the act, though, that allows both the WDO and the minister to agree to change the board's structure. If the municipal question became an issue around representation, that could be changed through that provision as well. There is opportunity to change the board's structure, and it could address the question you're asking.

I should also point out that of the programs we see designated under the act, of the 10 we expected to see come out of this bill at this point in time, only three are municipally run. The blue box program would be one of those. The remainder of those programs will be developed, implemented and funded completely by industry. That's another reason why there's not as broad a representation of municipalities on this board initially as one might think in terms of having them represented at the 50% level.

**Ms Churley:** Can I ask for further clarification? You say the minister "may" appoint industry reps as they come on stream. I'd like to try to find it in the act, but if you can clarify for me where to look now. I thought it actually said that once a program comes on stream, that industry "will" have representation on the board as opposed to "may," that it's not at the minister's discretion but that it would automatically happen.

**Mr West:** There are two sections I refer you to. The first one is section 3, paragraph 8: "If a waste diversion program for a designated waste is being developed, implemented or operated under this act with an industry funding organization, such number of members as may be prescribed by the regulations, appointed by the industry funding organization from among those members of the organization's board of directors...." That's a "may" provision in there.

If you go to the minister's requirements under this, under miscellaneous in clause 40(1)(c), it says, "prescribing the number of members of the board of directors of Waste Diversion Ontario to be appointed under paragraph 8 of subsection 3(2)." That's the minister's authority by regulation to do that. It is a "may" scenario. Not always for a new program will a new member be

required if it is felt that the current representation already reflects somebody who can speak for that specific sector.

**Ms Churley:** If I may, one more question just so I'm clear: in the board that will be set up now, what is representative on that board?

**Mr West:** As set out in the legislation itself, there are four members from municipalities as appointed by AMO. There's one member appointed by the Brewers of Ontario; there's one member who's appointed jointly by the Canadian Manufacturers of Chemical Specialties Association and the Canadian Paint and Coatings Association; there's one member appointed by the Canadian Newspaper Association; there are three members appointed by Corporations Supporting Recycling, one member appointed by the Liquor Control Board of Ontario and one member appointed by the Retail Council of Canada. There's the added provision for other members to be appointed if it's felt necessary where a new program is being developed. There's one member appointed who is employed in the public service—that is a non-voting member under the legislation—and then there's one member who is not employed in the public service, ie, from the public, who is appointed by the minister. That's the current structure without any of the motions being included.

**Ms Churley:** If I could reiterate once again, after having heard the list of the representatives on the board presently, I feel it's even more of a compelling case why the amendment should be accepted so that we have a fair, even representation of municipalities at all times. I recognize what Mr Arnott said, that AMO is supporting this bill overall, although there are some concerns and issues they've raised, and I understand that. But I can't believe they wouldn't be happy with an amendment which would give them—given that despite the fact that there are certain industries that will be taking on the responsibility and costs for dealing with their own waste, nonetheless municipalities have a big responsibility to make sure these things happen, and in many cases are far ahead of the provincial government because of the pressures on them. I believe we should make the effort to give them at least half the representation on the board.

I reiterate that I hope you'll support this amendment. I can't believe AMO will come after us and complain that we actually gave them more representation.

**The Chair:** Further debate? Seeing none, I'll put the question on Ms Churley's amendment. All those in favour?

**Ms Churley:** Could I have a recorded vote, please?

**Ayes**

Churley, Colle.

**Nays**

Arnott, Miller, Mushinski, Wettlaufer.

**The Chair:** The amendment fails.

**Mr Arnott:** I move that paragraph 10 of subsection 3(2) of the bill be struck out and the following substituted:

"10. Two members who are not employed in the public service of Ontario, appointed by the minister."

**The Chair:** Do you wish to speak to your amendment?

**Mr Arnott:** The purpose of this amendment is to provide the Minister of the Environment with the authority to appoint two board members who are not employed in the public service to the board of directors. Currently within the act, the minister is able to appoint one voting member to the board who is not employed in the public service and one non-voting member who is. This additional member will be a non-voting member, as specified in the motion for subsection 11(4). This motion will allow for the appointment of a member of the general public as a non-voting member, which will help the perception that board meetings will be closed and controlled by industry, which is obviously not the case.

**Ms Churley:** I just wanted to ask a question about that. In some ways it'll have an impact on a further amendment of mine—I don't know if you saw it—to appoint a member of the Ontario Environment Network. I'm wondering what the purpose is of adding this amendment, if somebody could tell me what the concern was. Was it something that was being thought about, that the environmental movement had been entirely left out of this process, or is there some concern about other groups missing? What is the intent behind this?

**Mr Arnott:** It's my understanding that this is in response to statements that were made by some of the presentations during the public hearings, people who felt the board membership was dominated by industry. This is an effort to address that concern and obviously gives the minister one additional appointee. The minister of the day will determine who that person will be.

**Mr Mike Colle (Eglinton-Lawrence):** I guess I had a somewhat similar question. If the minister or the government is worried about the perception about being industry-dominated, what is the government's rationale for not having some stakeholder from the environmental community if they really want to get rid of this perception that it's industry dominated?

1600

**Mr Arnott:** Under this amendment, as I understand it, the minister would maintain the discretion to be able to appoint whomever he or she wanted to fill this position. It may very well be someone from the environmental movement. I wouldn't want to prejudice that, but there's a strong possibility that one of those names would be considered, I would think. It may very well accomplish what some of these groups have expressed as a concern.

**Ms Churley:** I guess then the question is, for those of us who feel it's really important that the environmental groups be represented on this board, particularly an organization like the Ontario Environment Network, which, as you know, represents people from all across the province—I know they came to give a deputation here,

from the north and all over—many of whom have worked on these issues for countless years and have a high level of expertise and of course not coming from the municipal or industrial side have, I suppose you could say, no axe to grind other than trying to advance an environmental agenda—I think it would be very helpful if that were specified in the motion. I'm assuming if we pass this, when we get to mine—and I'd like to ask the Chair his opinion on this.

I have an amendment that deals quite specifically with this issue by making a provision that somebody from the OEN be appointed to the board. I think that's perhaps the best environmental group in terms of it representing all of Ontario and having expertise in this area. I'm just wondering, if this motion is passed, would it make my amendment later on moot? Would it just be a contradiction or could it still be on the table?

**The Chair:** I would deem that your motion is substantively different and would still be in order.

**Ms Churley:** So it still would be in order. OK.

**The Chair:** Further debate? Seeing none, I'll put the question on Mr Arnott's amendment. All those in favour? Opposed? That carries.

**Ms Churley:** Sorry. I have my motions that I prepared in a different order, so you'll have to bear with me for a moment.

**Mr Arnott:** We're in no rush.

**Ms Churley:** No, we're not. Are we at paragraph 11, subsection 3(2)?

**The Chair:** That is correct.

**Ms Churley:** OK. I move that subsection 3(2) of the bill be amended by adding the following paragraph:

"11. One member appointed by the Ontario Environment Network."

I'll speak briefly to this again. I'm glad it's still in order, because I did, in good faith, support the previous amendment in some fear that mine won't pass. However, I will make the case again that we specify the Ontario Environment Network in this amendment because they are representatives of environmental groups across the province, many of whom have worked for a long time in this area and I believe have a tremendous amount of expertise which they could lend and help the board in its quest to try to improve the overall 3Rs in this province and reduce our landfill problem.

We have to bear in mind that this is not just about providing money to municipalities, although I know it's a major part of the bill, and municipalities are quite anxious to have it passed, I recognize that, but we have to remember that it has a lot more to do with environmental concerns and the fact that it is getting harder and harder to locate and expand landfills. Incineration is out of the question. We have to be doing more progressive things like composting and dealing with organics, which I will note is not dealt with in this bill, and having read through the submissions, even AMO suggested it was a big gap in the bill, that it wasn't dealing with the big issue of taking our organics out of landfill. Because we're trying to find a way to deal with our garbage differently, to deal with our waste differently, the experience of this group could,

I think, go a long way to helping municipalities and the industry and the government to find programs and come up with the resources and new policy to make these other things happen that we need to have done in the waste management area.

That's why I'm making this amendment. I would like to see it written in stone that there will be a representative from this group. My understanding is that this would be acceptable to the other environmental groups, that there would not be an issue around, "Why them, not us?" that there is an understanding that this is the group which understands and represents this area best in Ontario. That is why I'm asking that this be done.

Let me add that perhaps the government members should bear in mind the usefulness—they didn't know it at the time, but it was a really good move appointing environmentalists to the advisory panel on the Oak Ridges moraine, and look what a difference they made; we'd all agree a tremendous difference. Although we have some issues and complaints about the final plan for the Oak Ridges moraine, which we'll continue to outline, the environmentalists on that advisory panel made such a difference to the final outcome. That's a perfect example where we had environmentalists on a panel that proved beneficial to protecting the environment. I think we should learn from that example and find a place on this board for an environmental representative who can, I'm sure, be of benefit in moving forward on the 3Rs and coming up with new programs that go beyond recycling and get us into dealing with organics, for instance, and move us forward in a progressive way.

I think it's very important, and it would be really too bad if we didn't reach agreement today that we will in fact include a representative from this environmental group. Is anybody listening over there?

**Ms Mushinski:** Oh, yes.

**Interjection:** We are.

**Interjection:** We are listening.

**Mr Wettlaufer:** We were just talking this over.

**Ms Churley:** Oh, good. OK. That's my say on that. I'd love to hear what other people think.

**The Chair:** Further debate?

**Mr Arnott:** Just in response, I appreciate the amendment from Ms Churley, but I have to indicate that the government does not support this amendment as proposed by the NDP, for the following reasons: the board membership has resulted from extensive consultation by the ministry and the voluntary Waste Diversion Organization. The board membership primarily reflects those directly affected by diversion programs, specifically those that will be paying fees when it's set up. It also recognizes the agreed-to number of positions with municipal stakeholders, which, as we've established, is four members. Membership also reflects those waste diversion programs that are expected to be completed in the early stages of the initiative, for example, the blue box and household special wastes.

The act also allows for the membership to change, as we've talked about already. The minister has the author-

ity to appoint members through regulation when new programs are being developed. The membership can also change by agreement between the WDO and the minister as part of the operating agreement. It's important that board membership be kept at a manageable number to be effective, and the act already allows for the appointment of a person not employed in the public service of Ontario. This representative is expected to be named by the Recycling Council of Ontario, a recognized non-governmental organization and a leading 3Rs advocate. A government motion to this bill, if passed, would allow for the minister to appoint an additional non-voting member of the public to the board.

**Ms Churley:** I would just like to clarify again the function of the OEN and why I'm putting that forward as the body to have a representative on this board. The OEN has no policy-making function and serves as a networking function only. They have their own appointment process for getting any representation on any board or any other body. It has 800 groups as members across the province. That's why I'm suggesting that one specifically as opposed to the government choosing, say, the Recycling Council of Ontario, which has a specific policy-making agenda that perhaps not everybody would agree with. The beauty of the OEN is that it represents all of those groups and they all have a say in who would be appointed to this body and it does not have its own axe to grind, its own particular policy. That is why this is the one I'm putting forward, because they do represent groups across Ontario.

1610

**Mr Colle:** I just wanted to add that I do support the amendment, because as much as the Recycling Council of Ontario and the stakeholders are mentioned here—the Brewers of Ontario and the LCBO etc—I think it's a great opportunity to tap the resources of some of the most innovative thinkers and the most knowledgeable people we have in this area, who could be of great benefit to finding lateral solutions to our problem of waste diversion. I think it would be a great signal to the grassroots stakeholders that the government is serious about looking at innovative ways of dealing with our waste diversion problems. The groups that are mentioned in the organization formed by Bill 90 are not going to really tap into the vast resources that are available at the government's fingertips. So that's why we think just appointing someone from the Ontario Environment Network would be a very progressive step that the government and all Ontarians would benefit by.

**The Chair:** Further debate?

**Ms Churley:** I wouldn't mind hearing what Mr Arnott has to say before I speak.

**Mr Arnott:** I don't want to speak for Ms Churley, obviously, but the root of what she is trying to propose is to create an opportunity for groups like the Ontario Environment Network to have a greater degree of say in the decision-making of this process. I just want to assure her that the government is always interested in whatever constructive input groups such as the Ontario Environment

Network would want to offer the government. Certainly, there are a number of opportunities for them to have input as we move forward with this bill. Certainly, there will be extensive public consultation on all waste diversion programs and there'll be opportunities on the Environmental Bill of Rights registry for them to provide constructive input to the government.

**Ms Churley:** I appreciate the comments made by Mr Arnott, but he will know me well enough to know that that's not satisfactory. We need somebody on the board who is aware and has a say in the day-to-day decisions being made by that board. For instance, because Mr Arnott mentioned the Recycling Council of Ontario in particular, I'm wondering if the decision has already been made that that's who it would be.

What I want to point out to Mr Arnott is that we must not consider the Ontario Environment Network as one of the environmental groups out there. For instance, the RCO has many of the same corporations on its board as the waste diversion office. That's why we specifically picked the OEN, because it is not an environmental group out there with policy-making decisions of its own, as the RCO and many other organizations are. To simply pick them out and say they're just another environmental group and the government's always happy to listen to what they have to say—I would take issue with, but that's for another time, given the track record. The reality is that we need to have a representative such as somebody picked by the RCO from the environmental community, from the waste diversion, waste reduction stream, who will understand these issues and have a say in the day-to-day decisions.

After the legislation is passed and this is up and running, it's going to be very, very difficult for anybody outside of that to be involved in not only the day-to-day decisions that are being made around the stuff that comes forward, but particularly in terms of making sure that this body looks to the future and is coming up with plans and programs to reduce waste in a much more aggressive way than we're doing today. That's what this is all about, and that's why I'm making the point again that we need it written into the legislation. In this case, I'm specifically saying the OEN, as a representative of 800 members across the province, would be a good choice for that. I'm making my case again that it is absolutely necessary that that balance be on this board. The board is sorely lacking in a balance right now in not having that community, with its expertise, represented.

**The Chair:** Further debate? Seeing none, I'll put the question.

**Ms Churley:** Could I have a recorded vote, please?

**Ayes**

Churley, Colle.

**Nays**

Arnott, Miller, Mushinski, Wettlaufer.

**The Chair:** The amendment is lost.

The next amendment is yours, Ms Churley.

**Ms Churley:** Are we doing 22(1)? Is that where we are?

**The Chair:** No, paragraph 5 of subsection 3(3).

**Ms Churley:** I move that subsection 3(3) of the bill be amended by adding the following paragraph:

"5. One observer appointed by the Ontario Environment Network."

Now, I understand, again from reading through the bill, that there is a section dealing with observers that the government has written into the bill. Once again, those observers will be there. They, as I understand it, have no voting rights. I hope very much, given that I just lost the amendment on having a representative from the OEN actually on the board, that you will agree with me that having an appointee as an observer at least in the room, hearing what's going on, who can be reporting back and having input in that way, might be the compromise we can make here. Having failed to allow them to be on the board, to have somebody representing that organization, therefore, environmental groups across the province, that way they can have input in an observer type of way. I hope very much that you will support that amendment.

**The Chair:** Further debate?

**Mr Arnott:** Again, thank you for the amendment. However, the government is not prepared to support this motion. The appointment of observers to the board has been the subject of considerable discussion by the ministry, through its consultations as well as presentations to this committee. The current observers identified in the bill are either making financial contributions, for example, the Ontario Community Newspaper Association, the Canadian Paint and Coatings Association or the Canadian Manufacturers of Chemical Specialties Association; or have a significant stake in the management of waste, for example, groups such as the Ontario Waste Management Association and the Paper and Paperboard Packaging Environmental Council.

This act also allows for observers to change, and the observers can also change by agreement between the waste diversion organization and the minister. Nothing in the bill would prevent the WDO from adding further participants to the board process. In other words, if the WDO wishes groups such as the Ontario Environment Network to be appointed as observers, it's my understanding they can do so.

**Ms Churley:** The whole purpose of having an environmental NGO representing that community as an observer is to promote better transparency and accountability. I just think that this is going to look bad. Mr Arnott just outlined all of the industry reps who are going to have not only more seats on the board than anybody else, than municipalities, and observer status, but once again there are absolutely no guarantees for the environmental organizations, those groups that have been dealing with these issues for a long time, who are accountable in this case to 800 members across the province. I think the bill is going to lose credibility. If you don't want them, it's clear, sitting on the board, you're going to lose

credibility if you don't at least allow that organization to sit as an observer.

Now, I understand that the government ministry had an opportunity to see these amendments in advance and that you have been told—and I know how it works, because I've been there as a minister—that for whatever reasons you don't want that position made available. But I would submit to you—I'm not quite sure from what you read out, Mr Arnott, there didn't seem to be any indication in your reasons behind this, or I should say the ministry's reasons behind this, what the problem would be—if you've got industry observers, industry representatives, it looks really, really bad to not have, in a case like this, in a situation like this, a representative from the environmental community, at least as an observer.

1620

I'm just wondering if there's any possibility. I don't know; perhaps staff here see this as a political decision and are unable to comment on it. But should staff have some reason beyond on it being a political reason, I'd like to have the opportunity to hear it. I don't want to put any staff on the spot. If this is a political reason, then that's fine. But if there is reasoning behind this which I don't understand, I would like to have an answer.

**Mr Arnott:** Ms Churley, I've provided you with the position of the ministry, and I think it speaks for itself.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour of the amendment?

**Ms Churley:** Could I have a recorded vote, please?

**Ayes**

Churley, Colle.

**Nays**

Arnott, Miller, Mushinski, Wettlaufer.

**The Chair:** The amendment is lost.

Shall section 3, as amended, carry? It is carried.

Section 4.

**Mr Arnott:** I move that clause 4(a) of the bill be amended by striking out "monitor the effectiveness" and substituting "monitor the effectiveness and efficiency."

**The Chair:** Do you wish to speak to the amendment?

**Mr Arnott:** Sure. The purpose of this motion is to require Waste Diversion Ontario to monitor waste diversion programs for efficiency as well as for effectiveness. Currently, the WDO is only required to monitor programs for effectiveness, as I said. Inclusion of the word "efficiency" will ensure that programs are monitored from an efficiency standpoint as well. Monitoring for effectiveness only could result in programs being assessed against performance criteria such as increased diversion and not whether the program is run in a cost-effective manner. A well-run, cost-effective program will reduce costs both for industry and municipalities.

**Ms Churley:** I would like to ask some questions around that. I'm so sorry I didn't sit in on the public

hearings on this. I read through the data. As you know, I was busy doing the nutrient management bill and couldn't be in both places; I think alternative fuels as well at the same time. But in reading through the bill, I'm really concerned. I don't support this motion and let me tell you why.

First of all, how do you measure efficiency? Will some programs be considered more efficient than others, and therefore some municipalities will get more money because they've contracted out, because they have user fees? Are things like the externalities of the costs of some programs taken into account? What does this mean in terms of overall funding? How do you define what you consider efficient? Does it mean that some municipalities will have pressure put on them to get into contracting out services, charging user fees that may not, in their municipality, make sense in their overall situation for the ultimate buy-in from their residents? I want to know what that means, what the implications would be. I hope somebody can tell me.

**The Chair:** Further debate?

**Mr Arnott:** I'd like to answer that, Ms Churley, just to the extent that I think we'd all want to see these programs run efficiently as well as effectively, and to me, "efficiently" means in a way that is cost-effective, such that money isn't being wasted. It's my understanding that the WDO will be charged with the responsibility of determining some performance benchmarks that will be used to determine efficiency. It's something that the government would like to support.

**Ms Mushinski:** I think it's a great idea.

**The Chair:** Further debate?

**Ms Churley:** I still would like a further clarification. What kind of guidelines? How does this board determine efficiency? Again, let me remind you that this board is made up of a majority of industry reps, a smaller minority of municipalities, with absolutely no environmental input now, not even as observers, to have any say. I'm really concerned about the implications of having added "efficiency" for the reasons that I outlined.

Mr Arnott, your answer was not adequate in terms of how they will determine what is efficient. Will they have the opportunity, will they have the clout, the authority in their analysis of what is efficient vis-à-vis what is effective to defund or lower the funding of some municipalities that, in their view, should be, say, charging user fees when they're not?

There are situations right now—I think it's Belleville that is using user fees, and you could be saying, "We like that, that's efficient. So let's tell all the other municipalities that they have to start doing that as well." That's my concern.

I don't know what this word means in this context. I think it's a very dangerous thing to add without having any guidelines around how they make these determinations and what kind of an effect and influence it will have on the funding of overall good programs, particularly when you've got experimentation going on, good programs coming on stream. Sometimes it's all topsy-turvy,

as in the energy field. You will find that we're charging higher costs for less environmentally dangerous power; non-renewables actually cost less. The costs that are artificially kept down are therefore seen as more efficient. They may be more efficient until you start taking into account the externalities of all the people who die in hospital cases from asthma, the nuclear plants and having to bury all that waste, all those externalities. If you don't factor those in, then, yes, on the surface it may well be that it looks like landfilling may be more cost-efficient than coming up with programs for more composting and getting the wet stuff out of the garbage.

So I'm really concerned that some innovative things that may, in some cases, cost more in the long run at first, because they won't appear to be efficient, will not be funded. That to me is a major problem. So I don't support this, and I wish that you wouldn't either. But I can see I'm not going to win this.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? It is carried.

Shall section 4, as amended, carry? It's carried.

Any amendments or debate on sections 5 through 10? Seeing none, I'll put the question. Shall sections 5 through 10 carry? All those in favour? Opposed? Sections 5 through 10 are carried.

Section 11: Mr Arnott.

**Mr Arnott:** I move that subsection 11(4) of the bill be struck out and the following substituted:

"Members not entitled to vote

"(4) The members of the board of directors appointed under paragraphs 9 and 10 of subsection 3(2) are not entitled to vote.

"Same

"(5) Despite subsection (4), the minister may authorize one of the members of the board of directors appointed under paragraph 10 of subsection 3(2) to vote."

**The Chair:** Do you wish to speak to the amendment?

**Mr Arnott:** Yes, just to explain that this motion is related to the second motion that I moved earlier, which allows the minister to appoint two members not employed in the public service to the board of directors. This motion first indicates that neither member can vote, and then allows the minister to authorize one to be a voting member. This provides the minister with greater flexibility in appointing an additional member without affecting voting patterns on the board.

**The Chair:** Further debate?

**Ms Churley:** Why? Do you have an explanation from the ministry as to what was said or what happened after the bill was proposed that indicated that this was necessary? It doesn't make any sense to me.

**Mr Arnott:** Again, this follows up the second motion I moved, which allows the minister to appoint up to three instead of two board members: two not employed in the public service, one voting and one not. Again, this is intended to respond to the concerns that were expressed through the hearings by some groups such as the Toronto Environmental Alliance and some municipal stakeholders

who felt that board membership was dominated by industry. Since the member is non-voting, industry should be neutral on this, we anticipate.

1630

**Ms Churley:** So this is a roundabout amendment without specifying that it is an environmental organization like the OEN, because if you read this, the explanation is that it's a way to get at that. But why not be specific? If you wanted to be cynical about it, you could say that government doesn't like the way things are going on the board and there's a rep out there who could possibly vote the way we want them—

*Interjection.*

**Ms Churley:** Who, me, cynical?

**Ms Mushinski:** No, I'm saying we're not cynics.

**Ms Churley:** The government could give somebody the opportunity to vote because that vote would support their program or their analysis or view of the situation. So why not be specific? Everything is left up in the air. There's a lot of discretion for the minister here instead of being more specific.

**Mr Arnott:** I wouldn't disagree. This still allows the minister the discretion to appoint a person he or she feels would be appropriate.

**Ms Churley:** So you're saying that this amendment directly came out of the concerns expressed by the OEN and others?

**Mr Arnott:** What I said was it's intended to respond to some of the concerns that were expressed by those groups.

**Ms Churley:** So can you explain to me how this would work, then? Or if not, maybe a ministry official would. I would really like to try to understand a little better how it would work, given that we don't know who these appointees are going to be and under what circumstances the minister might decide they can or cannot vote. I guess I would like a scenario where—can somebody help me with this? I don't understand it.

**Mr Arnott:** If you wish to hear more from the ministry staff, I'm sure they're prepared to come forward and attempt to answer your question.

**Ms Churley:** If I could; could I, Mr Chair?

**Mr West:** You mentioned the question regarding how this person or persons would vote. Clearly the minister would indicate that the additional member of the public to be appointed to the board would not be a voting member. It's not on a specific issue basis. They're appointed to the board, but the minister would indicate who of the two from the public would be allowed to vote. That's the way that would be set up.

**Ms Churley:** Why? What's your understanding of why the minister would want that discretion to determine which of the two—we don't know who they are at this point.

**Mr West:** That's correct.

**Ms Churley:** Why would the minister want that discretion as to who out of those two would be able to vote and under what circumstances? What is the concern here? I'm honestly trying to get at it.

**Mr West:** You asked under what circumstances. Right at the start when the minister appoints both of those individuals, he or she would indicate who would have the vote and who would just be a non-voting member of the board. So that's how it would work. There are two appointments. This is very much dealing, as Mr Arnott indicated, with some comments that were received that maybe there should be a recognition of more public involvement within the board. This is an opportunity to do that. But it doesn't affect the voting structure that has been set up within the board structure itself. So it's an opportunity to participate, one of them being a voting member and one of them being a non-voting member.

There are a number of groups that have asked for both membership status and observer status, and that choice needs to be made. The minister hasn't made her final determination yet as to which one of those voices or which one of those groups would be appointed in this context.

**Ms Churley:** So there would be two appointed?

**Mr West:** Yes.

**Ms Churley:** And the minister will make a determination as to which of those will have voting rights if one is granted voting rights. There's no guarantee that either of them will get voting rights.

**Mr West:** I would assume that of the two people who are put on the board as members, one will very definitely be given a voting right.

**Ms Churley:** I see. OK, thank you.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is carried.

Shall section 11, as amended, carry? It is carried.

First off, any amendments or comments on sections 12 through 22?

**Ms Mushinski:** You mean 21.

**The Chair:** No, I mean 22. There will be a new section, 22.1, added.

**Ms Mushinski:** Oh, right. I see. The Chairman is really good.

**The Chair:** Make sure your microphone is working when you make comments like that, please, Ms Mushinski. The flattering comments never make it on the record.

**Mr Wettlaufer:** I think Hansard caught that.

**The Chair:** Back to the question. Any comments or amendments, sections 12 through 22?

Seeing none, I'll put the question. Shall sections 12 through 22 carry? They are carried; which means the next amendment is yours, Ms Churley.

**Ms Churley:** I move that the bill be amended by adding the following section:

"Municipal organic waste diversion program

"22.1(1) Every upper-tier and single-tier municipality shall develop, implement and operate a waste diversion program for organic waste.

"Same

"(2) One half of the total net capital and operating costs of a municipal waste diversion program for organic

waste shall be paid for by the municipality and the other half shall be paid for by Waste Diversion Ontario.

"Same

"(3) The council of the municipality shall submit the program to the minister for his or her approval and sub-sections 25(2), (3) and 4) apply to the application for the minister's approval with necessary modifications.

"Definitions

"(4) In this section,

"single-tier municipality" means a municipality other than an upper-tier municipality that does not form part of an upper-tier municipality for municipal purposes;

"upper-tier municipality" means a municipality of which two or more municipalities form part for municipal purposes."

Shall I give an explanation for this amendment?

**The Chair:** Please do.

**Ms Mushinski:** Yes, please.

**Ms Churley:** Welcome. We just saw you on TV, Mr Bradley. I'm pleased to have you back with us.

**Mr James J. Bradley (St Catharines):** I'm glad to be back.

**Ms Churley:** I think he was taking part in a time allocation motion, if I'm not mistaken.

I noted earlier that this bill and this program are being set up not only to give municipalities money, which we all agree is necessary—it's been a long time coming and in many ways inadequate. I think I have a motion coming up to deal with that later. Nonetheless, municipalities are anxiously waiting for some money to come their way. We all acknowledge that.

Second, what is missing from this bill—and AMO, may I add, pointed it out as well and is one of the issues that they raised—is the organic waste problem and the fact that if we were able to take organic wastes out of landfill, that would go a very long way to resolving the waste management problems we have. I understand that organic waste represents 30% to 40% of municipal solid wastes. When Ms Ann Mulvale, the president of AMO, came to speak to you, she brought this up as a major problem and she mentioned that there is not a mechanism in Bill 90 to support organic waste diversion. I said earlier and I will say again how important it is for this organization to have credibility beyond just providing some funding for municipalities, that it is also about diverting waste. If we don't do that, if we don't take the opportunity in this bill to have something like my amendment in place, then we again don't have any leadership coming from the provincial government where we need to have it to make sure that it's happening.

1640

You will all remember and be aware that during the whole Adams mine—Adams Lake, I call it—debate this was a major issue. One of the things that came out of the Adams mine debate was the fact that we're putting far too much of our waste into landfills. It became increasingly clear. We know that other jurisdictions are doing it: Halifax quite successfully, and where is it in Alberta?

**Mr Bradley:** Edmonton.

**Ms Churley:** Edmonton, and there are some pilot projects here in Ontario, for instance Guelph. There was one, I think, that has been stopped now just in the Toronto region, which I visited. My leader, Howard Hampton, visited the site in Guelph. We've been promoting moving forward and having the province take leadership in getting the organic wastes out of landfill. There's technology that is proven. We don't have to reinvent the wheel here. The problem is that we have no leadership coming from the provincial government. We have no time to lose on this. We need to use this opportunity, and here is the perfect opportunity, to help municipalities. As has been pointed out by the president of AMO, this is a hole in the bill. It is not possible to divert enough waste from the waste stream unless such leadership is shown by the provincial government.

I want to remind you of what Ms Mulvale said. She said, "Organic waste represents 30% to 40% of the municipal solid waste stream. It is therefore essential to increase the level of organic waste diversion in Ontario if we are to achieve the overall 50% provincial waste diversion target. According to preliminary estimates from the WDO, the net cost of operating a province-wide municipal organic waste diversion program would be expected to be nearly \$50 million."

She then went on to recommend that "the legislation be amended"—and this is what this amendment is all about—"to enable the province to provide such funding. Organics represent a significant share of household waste, and without support, municipalities will not be able to establish and/or expand their organics diversion programs.... It is tremendously important for municipalities to have predictable and timely funding provided for their household waste diversion programs...." She's also talking here about blue box and household hazardous waste and urges the "committee to recommend that these two waste streams be designated immediately, ie, as soon as the legislation comes into effect, and that funding be effective as of the date of the designation."

That was a very strong point that Ms Mulvale, the president of AMO, stressed. Many of you here were on that committee and heard her. Nonetheless, this bill continues to be devoid of any reference whatsoever to diverting waste, which is the key challenge before us. We're way behind other jurisdictions. We've got a major problem with our waste management.

As I said previously, it's getting harder, for good reason, to site landfill. Incineration: as you know, the New Democratic Party banned it as an option. We still support that. Even if the government chooses to try to site incinerators in communities at this point, it's not going to happen, because people are going to fight, just as they are now around landfill.

We've got an urgent matter before us. We've got a bill before us which, in my view, is astounding in that it does not deal with diversion. I am asking the committee to please support this amendment and to go back to the Ministry of the Environment, to your minister, and say

that this is a big hole in the bill. Municipalities aren't happy about it. They asked for this amendment and it isn't there. I would urge all members to support this amendment so that this bill will have, and the government will have, some credibility in terms of pushing forward on a diversion waste management plan, which this bill is devoid of. It's not there.

**Mr Arnott:** I would be happy to answer some of the issues that Ms Churley has raised and first of all indicate that we appreciate and welcome her support for organics diversion, which is something the government also recognizes is a very important issue, not only for the provincial government but also for municipalities.

Organics are one of the materials that will most likely be designated by regulation under the act and, once designated, the minister will request the WDO to develop, implement and fund a program for this material. There are also a number of options that need to be considered in developing and implementing an organics program, and we believe the WDO is best suited to determine which organic diversion options will be considered and implemented. With regard to funding, the Waste Diversion Organization is best suited to determine the costs to be covered under the program.

**Mr Bradley:** On a quick point of order, Mr Chair: First of all, I'm going to ask for unanimous consent to be substituted on to the committee if that's possible.

**The Chair:** Agreed? Agreed.

**Mr Bradley:** Thank you. I'll remember that.

**Ms Churley:** You owe them now, Jim.

**Mr Bradley:** I hate owing them. Thank you.

On this proposed amendment, there's no question that organic waste can be dealt with appropriately. Some members of this committee are aware of some of the European experiences. In North America, although there are some jurisdictions that have begun some good organic waste diversion taking place and treatment of organic waste, and they are to be commended, I think we've seen examples, particularly in Europe and in other parts of the world, where organic waste has been dealt with in such a way that it does not make its way either into incinerators or into landfills.

I'm certainly interested in the comments of the head of the Association of Municipalities of Ontario. Ms Mulvale has certainly been vociferous on this subject. She is concerned.

I know that Mr Arnott made a comment to the committee that organic waste would likely be designated by regulation. I would prefer to see it in the legislation itself. I think as members of the Legislature we should always be striving, wherever we happen to be sitting in the Legislature, to have as much as possible contained within the legislation itself and not left to the regulatory regime. That's because we have that kind of input and the public has good input when it's done by legislation rather than by regulation. Regulation, by its very nature, is carried out largely behind closed doors. Yes, there is some input from time to time on a regulation and I want to concede that, but by and large the regulatory framework that follows a piece of legislation is as a result of consultation

that takes place within government, perhaps within ministries and some members on the government side may have some input into it, particularly those in the cabinet, but I do wish to see it contained in this legislation.

To achieve the kind of diversion of organic wastes that I think all members of this committee would like to see, it's likely that we would have to see some investment of funds by the province. I'm not suggesting for a moment that the province assume the lead in this in terms of the funding, as it did when we initially set up this kind of program. The province was very prominent in its funding.

Certainly the private sector which generates the waste, which causes the waste as a result of economic activity taking place, should assume a good deal of the cost. I think that's an assumption we would expect.

In reality, I think municipalities expect that they're going to assume cost. I think what they would like to see is the province assume cost, if not operating, certainly in terms of research and development and promotion as opposed to operating. There's nothing I'd like better than the province to become involved once again in the operating costs of waste diversion. I doubt that's going to be on the books for this government, so what I'm saying is perhaps then you would look at funding pilot projects such as we see taking place in Guelph. Some of the great examples that we always use in Canada now are Halifax and Edmonton, quite obviously, but if we could see some innovation fund specifically in the field of waste management, that might be quite helpful.

1650

You can say that the minister will designate later on. We're not certain in government who a minister will be. It's likely, as a result of the leadership race that's within the governing party now, that we may see some changes after that is over. You may see different ministers in different ministries. While I'm relatively confident the present minister would want to designate organic waste—I think I would be fair in saying that; I'm not putting words in her mouth—we don't know whether that minister is going to be in place at that time. There may be another minister who does not believe that is appropriate.

Keep in mind, and Ms Churley made reference to this, the hierarchy of the 3Rs. I'm glad it's not the 4Rs, because I remember they used to tell me about the 4Rs a long time ago. When I became minister, I started using 3Rs and people would remind me there's a fourth R, that being recovery, which really meant burning garbage, something I've never found particularly productive although it does happen in this province in a couple of places. It used to happen—some members of the committee may be interested in this or may already know this—in open garbage burning. I recall that years and years ago in Sudbury there was a fire going at the dump. They burned the garbage at the dump. We didn't call it a sanitary landfill then; we called it a dump. We've come a considerable way since then, but diversion is the key.

In the hierarchy, the first is reduction. How can we reduce the amount of waste we produce in the first place?

The second is, how can we reuse materials as much as possible? In many cases it would be our grandparents who remember some of the old tricks of reusing things that today we'd probably toss out. Perhaps we're re-thinking that now, but they reused a lot and that was because of economic circumstances. The third is recycling, which is a useful exercise, so it's not the first or the second.

We have to deal with organic waste. I think it's a major portion. I would like to see it in the legislation. I think the amendment accomplishes what most members of this committee, or perhaps all members of the committee, would like to see, and I'm very supportive of the amendment and hope that members of the governing party will give it favourable consideration.

**The Chair:** Further debate?

**Ms Churley:** I'd like to thank Mr Bradley for his support on this amendment. In many ways it's perhaps the most important amendment before us today given the crisis, I would say, crises that we have in the ability to dispose of our so-called garbage.

One of the things that I noticed Ms Mulvale talked about in her presentation was that we generate a higher per capita waste than most other countries in the world—I don't have that percentage, but I know that's true; it's also true of our energy consumption—and that we have to do something about it. If we don't amend this and get this as part of this bill, I fear that nothing is going to happen for a long time, and that's a real concern.

It has been mentioned here that all governments, except yours, have managed to avoid, unlike the Liberals before this government and then us, problems with trying to site landfills. You can ask Mr Bradley, you can ask Ruth Grier, what a difficult, difficult process it was. You haven't had to deal with that in a serious way, the way both our governments did.

However, I would say this to you: when the NDP went through the whole terrible process of trying to take the responsibility away from municipalities—and Mr Bradley will remember how difficult it was to get anything happening when he was the Minister of the Environment—we, in our wisdom, decided—I wish the sarcasm could be recorded in Hansard here—"Oh, well, somebody's got to do something here; we will take it on as a province." To our horror, it did turn into a nightmare, but I just want to make it clear that we did decide to make it a very open process. Some of the staff who are still here will remember that. We decided to make it—

**Mr Bradley:** Their hair was darker then.

**Ms Churley:** Their hair wasn't quite as white as it is now. Ruth went whiter more quickly than I think she would have. I was, before I became minister, the parliamentary assistant to Ms Grier for a short time and worked on these issues and I remember it as well.

But what I wanted to say is—and this is all relevant here; it's really important that people understand this—under our government and the previous government there was an Environmental Assessment Act and every landfill that was proposed, if it was public, as most landfills are,

had to go through an environmental process. One of the parts of that environmental process at that time was—and I'm getting to my point—that you had to look at alternatives to the site and alternatives to the undertaking.

**Ms Mushinski:** Unless the minister gave it an exemption.

**Ms Churley:** There were cases where the minister did give those exemptions, no doubt about it. That happened. That's always been the case and I assume always will be the case. I can't imagine that any government would take that ministerial responsibility or, I suppose I should say, prerogative away.

But what I wanted to say about the Environmental Assessment Act is, had we not lost the government to the Tories in 1995—some of those sites had been reduced down after much agony and there were still some more that had to be taken off the table—whatever had been left on the table would have had to go through a thorough environmental assessment, and believe me, there would have been no exemptions; we promised that. At that time, alternatives to the site and alternatives to the undertaking would have to be looked at under the existing Environmental Assessment Act then—before the Tory government came in and gutted the EA process.

Now you have an environmental assessment process. You don't have to look at any of these things. What I want to say here is, had that process still been in place and had we gone through and continued to the end, picking which sites we were looking at or a site for the landfill, it would have had to go through that process, at which time there would be no doubt that alternatives to the undertaking and the site would have to be looked at under the act. It is too bad that didn't actually go ahead, because I think there would be no doubt that at that time we would have been forced to look at the alternatives to the undertaking. There was enough activity going on in Europe and other jurisdictions that would have dictated in many ways—groups like the OEN and others and communities would have come out in full force—and we would have had to look at these programs, including dealing with organic waste, in a very serious way and brought those on stream.

That didn't happen. That whole process was stopped and many people, especially those whose land had been picked as a possible site, were very glad to see it happen. But the reality is as well that there was a recession, and we all know that during recessions there's less waste produced. It gave this government some wiggle room, leeway, but it's catching up to us again. It's just too bad that we have not gone through that process so that we would have had to look at these alternatives to the undertaking, because we would have been further ahead.

But here we are today, hardly any further ahead whatsoever; in fact, I think in some ways we've taken backward steps. We now have this opportunity, although we don't have an environmental assessment before us, for the government to show that it's serious about reducing garbage going to our landfills. Nobody disagrees any more that we have to get the organics out. This bill

before us today will not go one iota in that direction, and that's a real shame.

Here we are today, 2001, we have to have this 50% diversion, and we don't have anything in a bill that's coming forward which shows that the province is taking any leadership on this. That's a crying shame. This is an opportunity for members of the committee to go back to your minister and say that you disagree with their position on this, you support AMO's position on it and we'll agree to this amendment today, which I might add is an amendment that not only the OEN but AMO asked for as well. I hope you'll support it.

1700

**Mr Bradley:** A point of clarification on this, if I can, unless there's another member who wishes to speak. I don't know whether staff answers this or the parliamentary assistant.

**Mr Arnott:** They help me, if I need it.

**Mr Bradley:** They help you all the time, I know that.

You mention that with organics you think it's going to come in through regulation. Which of the industries would you anticipate would be funding organics? Would you be talking about the supermarkets, the farmers, the processors, or who would be funding that? I could certainly see that as a result of that funding we may see some increase in the price of food, but who do you anticipate would be funding that?

**Mr Arnott:** That's a very good question. It is again, just to clarify, the intention of the minister to designate organic wastes at an early opportunity, but I would ask our staff, if someone has an answer to that question, to come forward.

**Mr West:** You've indicated that this is very important to the ministry in terms of our meeting our reduction goals. Organics is clearly one of the 10 items that have been identified for designation. Organics is a very important one of those 10. If you look at who may be in a position to fund this, I would expect what you will see here is that it will be either brand owners or first importers of products that are identified that could be utilized from an organics perspective, and that assumption we think needs to be looked at by Waste Diversion Ontario board of directors and those who will be helping develop the program.

It does not necessarily mean that we can't look at options as to how to deliver the best results around diversion. There are a number of options out there. There are a number of jurisdictions that are utilizing various programs, and we want to look at those. We want the WDO to have serious consideration of that and develop the best program and identify who, in our terms, the stewards would be to pay those fees. Clearly, it is the intent to have an organics program under this initiative. It is clearly the intent to move in that direction.

**Mr Bradley:** If I may direct a supplementary type of question, and perhaps this is a policy question so you can say it's a policy question if it is, but would you anticipate that the Ministry of the Environment might consider some innovation funding for specific pilot projects deal-

ing with organics or do you see that coming out of the fund itself, those who are producing the wastes in the first place? Would you see the province playing any role at all in that through any kind of funding mechanism you have within the ministry?

**Mr West:** I don't think I'd be in a position to indicate that, Mr Bradley.

**Mr Bradley:** That's fair enough.

**Ms Churley:** Could I follow up and ask you a question further to your statement about the WDO being involved in developing programs for dealing with organic waste? Would it be a voluntary program?

**Mr West:** No. Clearly, the intention is that this would be listed as a material designated under this particular act.

**Ms Churley:** I see.

**Mr West:** The minister would ask the WDO to develop and implement and fund a program for waste diversion of organics. We very clearly see it as an important part of this bill.

**Ms Churley:** But there are no dollars directed to this—

**Mr West:** Under a designated material, when the minister asks the WDO to develop and implement, she also asks them to fund that program.

**Ms Churley:** The funding would have to come from whatever industry could afford—

**Mr West:** Whoever is identified as a steward.

**Ms Churley:** —to manage a program completely on their own, so would the government also contribute?

**Mr West:** This would be those who are identified as stewards under the bill as paying fees required to implement a waste diversion program for organics, and there are quite a few options available for Waste Diversion Ontario to undertake that kind of development, implementation and funding of that program.

**Ms Churley:** I think it was the WDO that came up with the \$50-million expenditure as the net cost of operating a province-wide municipal organic waste diversion, and that's what I'm getting at here: a province-wide municipal organic waste diversion. That \$50 million, if I heard correctly, was a number that the WDO came up with. Is that not correct?

**Mr West:** That's my understanding too. Just remember, that was an organization that was voluntarily put together by industries that came up with those numbers. Those numbers would have to be further worked on as to (a) what type of program would you want to have and (b) what would be the cost associated with that? But they did some work on that.

**Ms Churley:** If I may, have you had a chance to look at my amendment?

**Mr West:** Yes, I have.

**Ms Churley:** Given what you just said, why would this amendment, if that's something they're going to be doing, be a problem? If that's the direction you say, although it's not so clearly defined as this amendment, what is the problem with this amendment?

**Mr West:** Outside of the blue box materials, it's the only one that is really prescriptive within the legislation. The whole provision of this bill is to mandate an organization with a number of materials for which we as a province would look for waste diversion programs to be developed. There are 10 other materials that are intended to be recognized through a regulation, and that's what we think is the appropriate route to take: by regulation. That will allow us the ability to fine-tune what that means rather than enshrining it within legislation and maybe having to change it afterwards.

**Ms Churley:** So that is your concern, then, that right now it can be done by regulation and my amendment actually enshrines it into law. Therefore, you're thinking that there could be problems—

**Mr West:** We would want to be consistent in our approach to all the materials, save and except the blue box program, for which there is a specific provision in there around the funding side. We would want to be consistent in terms of addressing these through regulations. That's what the direction of this framework, legislatively, is all about: designating materials by regulation and indicating very clearly that the intention is that organics would be one of those materials.

**Ms Churley:** I see. OK, thank you. I still think the same, to the government members, and understand that the staff are not responsible for the policy directives here. I just think it's a serious problem, a real problem, that this bill does not deal with diverting wastes such as organics. I have trouble believing that we're going forward with this bill and this is not a big piece of it.

**The Chair:** Thank you very much. Further debate? Seeing none—

**Ms Churley:** Can I have a recorded vote on this?

**The Chair:** I'll put the question on Ms Churley's amendment.

#### Ayes

Bradley, Churley.

#### Nays

Arnott, Miller, Mushinski, Wettlaufer.

**The Chair:** That amendment is lost.

**Ms Churley:** It lost again.

**The Chair:** Section 23: are there any comments or amendments to section 23? Seeing none, I'll put the question. Shall section 23 carry? Carried.

Section 24: back to you, Ms Churley.

**Ms Churley:** I move that subsection 24(1) of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

"Contents of waste diversion program

"(1) A waste diversion program developed under this act for a designated waste shall include the following:"

You might think that this is insignificant, just a little word change. If you look at the original section, it says

that "designated waste may include the following." Therefore, as I understand it, there was such a thing as a friendly amendment before. I recognize that this would not be considered a friendly amendment because what I'm doing is changing the wording significantly. The little word change means that designated waste "must" include the following as opposed to just "may."

If I may, Mr Chair—

**Ms Mushinski:** If you shall.

**Ms Churley:** Yes, it means you "shall" as opposed to "may," and I think that's very important, once again, that we be very clear that this softens it and gives a flexibility that shouldn't be in the bill. So I recommend that all members support this.

1710

**Mr Bradley:** I think it's an important but very minor amendment that members of the government can easily support. That's why I put it in that category, because if we say it's a major amendment you won't support it, I don't think.

**Mr Wettlaufer:** It's OK, Jim.

**Ms Churley:** They won't support it anyway.

**Mr Bradley:** So let me say it's important. Surely, if you have a waste diversion program under this act, you would want it to include the four points mentioned. Why would you not want it to? Why would you say it "may"? Surely it makes sense, and I hope the government will consider this. I think it's a reasonable amendment, it's not a radical amendment, to say, "1. Activities to reduce, reuse and recycle the designated waste." Obviously that should be a "shall," not a "may."

"2. Research and development activities relating to the management of the designated waste," a very important activity, should be compulsory.

"3. Activities to develop and promote products that result from the waste diversion program": plastics come to mind immediately, all the different uses of recycled plastics, as just one example. Surely that would be compulsory.

"4. Educational and public awareness activities to support the waste diversion program." I think what each one of us has recognized, although I always hate to even mention promotion, because what it starts to make me think about is those government advertising—

*Interjections.*

**Mr Bradley:** So something approved by this committee at least. But I think it is reasonable to encourage people to participate in these kinds of activities and to tell them why it is important to do so. One of the reasons that some of the waste diversion activities have been successful so far is that the public clearly sees why it's important, what the alternative is if you don't do it and why it's important.

This is an ideal way for the committee to come together, Mr Chairman, and indicate our concern, as all members of the committee, with a possibility rather than a probability. The probability is contained with the word "shall." I hope Mr Miller has gone out and received the word now that "shall" is very reasonable.

**Mr Wettlaufer:** It's OK.

**Mr Bradley:** I would think the parliamentary assistant, moderate, progressive-minded person that he is, would understand the importance of changing "may" to "shall" with this amendment, and he certainly would want to support it. I would be surprised if he didn't.

**Mr Wettlaufer:** That doesn't mean you can run all over him.

**Ms Churley:** I'm wondering if I could hear from the parliamentary assistant why the namby-pamby word "may" is there instead of the much more clear word "shall."

**Ms Mushinski:** Now you're getting personal.

**Ms Churley:** That wasn't personal. He didn't write it.

**Mr Arnott:** In response, as we've discussed already, currently there are 10 materials that are intended to be designated by regulation under the act. Those are blue box materials, household special wastes, scrap tires, used oil, electronic components, batteries, fluorescent lighting tubes, organic wastes and pharmaceuticals. I think those are the 10. It is the government's belief that flexibility is required as it is impossible to predict specific program requirements for each of these materials. Therefore, the government is opposed to this wording change.

**Ms Churley:** But wouldn't you say that in this case those which we know should be included—that you don't need any flexibility but we need clarity there that those should, "shall," be included? Wouldn't you agree, Mr Parliamentary Assistant?

**Mr Bradley:** To help the parliamentary assistant out a bit—I notice that your minister today said she taught Latin, and "non sequitur" I think is the word I wanted; your response to Ms Churley seemed to me, as an objective observer, to be a non sequitur. You talked about the number of materials that should be designated. She's talking about four points here rather than materials. So I can understand your saying it's going to be designated, and you've named those, but these are four activities. Why wouldn't you want these four activities to be compulsory as opposed to simply optional?

**Mr Arnott:** Because we believe it might actually inhibit some positive programs that would benefit the environment and the advancement of recycling if we were to do what Ms Churley has suggested, by eliminating some opportunities to pursue recycling programs, if we were to accept her wording change.

**Ms Churley:** Are you having fun, Mr Chair?

**The Chair:** I am always engrossed in the debate that takes place in this committee.

**Ms Churley:** I want to thank my colleague Mr Bradley for bringing that up, because I did respond directly to the list of materials you mentioned, but this is quite specific. Let me say that if you change the wording from "may" to "shall"—and I think we would all agree that those four listed here are ones that should be included. We have no argument there, I think. The wording is such that even with the word "shall," it doesn't preclude other activities from being included in this section later if you want to. What it would be saying now is "A

waste diversion program developed under this act for a designated waste shall include the following," and then it lists the four. It doesn't preclude, if you change that, having other activities added on. What I'm trying to say here is that there should be no question that these four activities be part of the waste diversion program.

When we bring in new legislation, I like to see those pieces that we all agree on as being critical clearly outlined as something that will happen, as opposed to may happen. If you look at the four listed here, you will see—I would like other members to take a look at this and, if you can, give me a reason why you think those four particular objectives shouldn't be written in stone, that this is something the organization shall have to do, bottom line. Does anybody want to respond to that?

**The Chair:** Ms Churley? Oh, I'm sorry, Ms Mushinski.

**Ms Mushinski:** You're not the only one who has made that mistake.

I think changing it from "may" to "shall" gets back to my original point. I believe it makes it prescriptive rather than permissive. It seems to me that the whole thrust of this bill is to, I suppose, use the carrot rather than the stick approach. We're a fair and reasonable government. I think industry is fair and reasonable. I think that in the last 20 years industry has come a long way to accepting their responsibility for improving the environment. I think if we're now going to start to use the vinegar versus the honey approach, then you will find an industry that will balk at that. So I would not support including "shall." I think it's, as I say, too prescriptive, and I think it would change the whole intent of the bill, which is to encourage the private sector, especially those industries referred to, to really think about the holistic approach to improving the environment, especially through the 3Rs.

**The Chair:** Further debate?

**Ms Churley:** I just want to point out again that if you read the section, it doesn't refer to any specific industry-based programs. They are the principles of what this waste diversion program should be under the act. So if you read carefully—and I'll read them again, and tell me if you don't agree with these: "activities to reduce, reuse and recycle the designated waste." We all agree with that, right? I know I'm not the Chair, so I can't make you put up your hands, but I'm thinking that we all agree with that, obviously.

Number 2: "research and development activities relating to the management of the designated waste." How can we not agree with that? How can we move forward without agreeing to that?

Number 3: "activities to develop and promote products that result from the waste diversion programs." That's just common sense.

**Mr Wettlaufer:** What would the NDP know about that?

**Ms Churley:** He said, "What would the NDP know about that?" just so we have that on the record.

**Ms Mushinski:** You were supporting tax cuts a few weeks ago.

**Ms Churley:** Now we're getting into tax cuts. Finally, we've got some fire here. People are coming alive.

Number 4: "educational and public awareness activities to support the waste diversion program." Surely nobody disagrees with that. I would say in good faith that all of us on the committee would agree that those four are absolutely essential and it's just a simple matter of changing the wording so the government looks like it's really committed to making this happen. When you've got weasel words in there like "may," then it looks like you're perhaps not all that committed to making these four things a very important part of the mandate for this organization.

Having said my piece on that, perhaps I've changed somebody's mind.

1720

**Mr Arnott:** I'd just like to state again that the government believes that there has to be flexibility in this. For example, if there was a waste diversion program that was proposed and it only satisfied three out of four of these criteria outlined in section 24, if we accepted your amendment, Ms Churley, that program would not be accepted. Yet it might mean that there would be tangible, measurable progress toward improving waste diversion in the province of Ontario, even though it didn't accomplish all four of those. So for that reason, again, I would argue that there needs to be flexibility, and for that reason, the government has indicated that it is opposed to your amendment.

**Mr Wettlaufer:** It's noteworthy, I think, that Ms Churley referred earlier to the fact that when there's a recession, there is a significant reduction in waste. It took me six years to realize that that was the purpose of the government of the day, the NDP government's motivation. I realize they successfully ensured that Ontario went into a period of recession, and of course they did have a reduction in waste.

I think it is very important to keep in mind that when you want to have prescriptive definitions or prescriptive legislation, you realize that if you do something like that, it takes away from the balance necessary in legislation. Yes, we have to protect the environment, but we also have to ensure that there is significant investment, expansion and jobs. I think we have to be very careful in using prescriptive language so we don't discourage that investment and those jobs.

**Ms Churley:** I was all ready to let it go, but of course now I've been provoked into responding to that. You were so close to a vote on this one. But having been provoked, I must say that I would advise Tory members at this point in time to perhaps bite their tongues when they want to talk about the NDP being responsible for the terrible recession that took place, which was starting before we were elected in 1990. As Mr Bradley knows, it was starting to go in the dumps and started to recover just in time—

**Mr Wettlaufer:** Oh, so the Liberals caused it.

**Ms Churley:** No, in fact—

**Mr Bradley:** South of the border.

**Ms Churley:** South of the border. I would just caution you to be careful with that because, as you know, preceding the terrible events in the US on the 11th, we were starting to go into a recession, as outlined in a leaked document from your government that said you saw there was a recession coming. Of course, now after September 11, that has been aggravated.

Why is that happening under this government when, in fact, a certain member of the Tory government said tax cuts helped the economy of the US? He even took credit for the US economy. But we see very clearly that no government in Ontario creates—we all have our different ways of trying to keep people afloat and keep jobs for people during recessions.

But I caution you at this time to be very careful about that, because you can't go on much longer. You all heard the news today about the \$5-billion deficit, and you still want to give your corporate tax cuts. All you can do, therefore, is cut even more programs. So I'd be really careful now, because you're falling into a trap. You're going to have to answer for what it is you did wrong to make us go into a recession in Ontario.

**Mr Wettlaufer:** It's really hard, Ms Churley, when you're blaming the Liberals.

**Ms Churley:** Having made that caution, coming back to the change of word before us, I just want to say again that this particular clause is not and shouldn't be about flexibility. I don't think anybody is arguing that we want to have flexibility in certain areas so that new and innovative programs can come on board. In fact, an earlier amendment of mine that would allow that innovation was rejected by government members. When I talk about clause 4(a), that's one where you have now included in yours "effectiveness and efficiency." I'm very concerned about "efficiency" being added to that, that the criteria and guidelines for how that efficiency is going to be measured would in fact disallow flexibility around communities funding creative and innovative ways to deal with waste. If because of this the WDO decides that it's not efficient in their terms, it could discourage municipalities from moving forward. So I'm just really disappointed that such a small but important word change here that would beef the bill up, give it more clout, is not being accepted.

**Mr Bradley:** Yes, Mr Wettlaufer provoked me into making a brief further comment. I actually prefer it to be prescriptive, because that implies that there shall be the same rules for everyone. One of the problems when you put the word "may" in instead of "shall" is that some may be treated one way and some may be treated another. I know that there are those who say, "Well, the virtue of that is in fact that there is flexibility." I think the lack of virtue in that is that different people get treated in a different way. If they all have to follow the same rules, it seems sensible to me that they'll be prepared to do so, knowing that everybody else has to follow the same rules. I can't see with the activities that you have suggested, the four stipulations that are here, that that would discourage anybody. I commend the government for the

wording that's contained in there right now. I don't know why it would discourage anyone from proceeding with an activity.

To Mr Wettlaufer, I can say that my observation has been that the argument you've put forward—and perhaps I've misinterpreted it, so I'll be kind—is one that was made for years, and I'm going to tell you it doesn't really affect the industries in that way. As long as you will say that they will not do it, that they won't undertake certain economic activity as a result of an environmental stipulation, then it will happen that way. The only way you get them to move, in other words, is to put it in rules, to put it in law. Then they will move.

It's interesting, because it was someone from this field of waste diversion, whose name I won't mention, who was talking about his frustration—and this was earlier, before this bill—at how long it was taking to proceed with this and how he felt that the government was being overly cautious with industry, that industry was prepared to move forward in this specific case and the government was simply being very cautious about it; I don't know if it was, and I don't want to provoke the Chair of the committee. I don't know if it was the Red Tape Commission or what it was, but by and large I found that what the industries will say, what the businesses will say, is, "As long as you treat all of us the same way," in other words the rules are there, the stipulations are there, "at least we're all on the famous level playing field."

I'll tell you, as soon as you go down the road of saying an environmental law or an environmental regulation will prevent economic activity, then you're going to have the argument constantly pushed in your face that this new regulation you're bringing forward is going to cause problems for industry. I can recall, as a last instance, a particular one in the Niagara region where there was a part of a plant that closed down. The president of the company could have come out and said, "Oh, well, because of new environmental regulations, we closed that down." He didn't say that, and there were some new environmental regulations. He said it had nothing to do, really, with environmental regulations; it was a matter of the product they were producing not selling any more. They could not do it economically regardless of any environmental implications.

So I guess the point I make is that when you make it prescriptive, it's the same rules for everybody. I don't think you're going to prevent people from expanding their economic activity by not supporting this amendment.

1730

**The Chair:** Any further debate? Seeing none, I'll put the question.

**Ms Churley:** Recorded, please.

**The Chair:** Ms Churley has asked for a recorded vote on her amendment.

**Ayes**

Bradley, Churley.

**Nays**

Arnott, Miller, Mushinski, Wettlaufer.

**The Chair:** That amendment is lost.

Ms Churley, back to you.

**Ms Churley:** I move that paragraph 1 of subsection 24(1) of the bill be struck out and the following substituted:

"1. Activities to reduce, reuse and recycle the designated waste, in that order of priority."

So what has changed here is that I've simply kept "activities to reduce, reuse and recycle the designated waste," but I've added "in that order of priority." I spoke earlier to the importance of "that order," of the wording, and I mentioned that I was pleased to see the government's first amendment, the purpose, although I was disappointed that you didn't accept my amendment to change it to, "The purpose of this act is to require the reduction, reuse and recycling of waste and to require the development, implementation and operation of waste diversion programs."

What it does say is—it's the same as what we just dealt with in terms of the wording. It says, "The purpose of this act is to promote the reduction" and "to provide for the development." I did make an amendment to tighten the wording on that, and it was rejected. But I did commend the government for at least having the 3Rs in their proper order: reduction, reuse and recycling. I think perhaps the government members can even support this. Wouldn't that be something? I might get support from all members.

It's so important, as we move forward with this bill and start dealing with our priorities, that people understand that this is the order in which we want the activities to be dealt with, and so we have here "reduce, reuse and recycle." I just want it written in so it's very clear that the activities have to be dealt with and should be dealt with within that framework.

**The Chair:** Further debate?

**Ms Mushinski:** I'd just like to ask a question, if I may.

**The Chair:** The floor is yours, Ms Mushinski.

**Ms Mushinski:** I guess the question—perhaps I'm as confused as you were about one of the others—is, why? Does reusing and recycling not automatically reduce?

**Ms Churley:** No. I'm not quite sure what you're talking about, being confused earlier. I wasn't confused; I simply wanted to know the answer. It just didn't make any sense to me. I assume that this one doesn't make any sense to you, and I'm happy to try to answer your question.

Once upon a time, in a faraway land, I got involved in the whole garbage issue over incineration in my riding. In fact, it's what led me here. I got to know a fair amount about—I believe Mr Perks, who's in the room today, was involved early on in the development of the blue box as well. At that time, what happened was that there was so much focus, in fact almost complete focus, on the blue

box and recycling waste. For far too long, that was the emphasis. But of course, if you think about the order of this wording, obviously to reduce means that less waste is being produced in the first place. If you compare that with recycling, the last in the hierarchy, you've got the waste produced—let's take a bottle, for instance, a liquor bottle. If you put it into the blue box, it has to be carted back, and in fact some of them end up in landfills still, the coloured ones. Energy consumption is used over and over and over again to recycle that container, as opposed to, say, the beer industry, which takes that bottle, collects it back and refills it over and over again. Yes, there's energy used in refilling that bottle, because it has to be washed and refilled, but the middle one, reusing, is somewhat better than recycling because you're not using up resources over and over again.

It makes common sense, if you think about it, if you reduce certain waste in the first place. Think about over-packaging, for instance, if you buy CDs or other things with tons of packaging on it which in most cases either goes in the garbage or is recycled. If you can find ways—and there are many ways—to reduce unneeded packaging, then right away you've got less waste to deal with.

That's what that's all about. There are 3Rs. With reduction, of course, it goes without saying that you have less garbage to deal with. If you reuse it, you're using up fewer resources to reuse a container, especially unrenewable resources. Then the recycling comes in last, because you've got that container, but it takes a lot of energy to turn that piece of waste, whatever it may be, into the same product over again or another product.

**Ms Mushinski:** So you just don't see that there may be an example of where "reuse" actually would come before "reduce," in terms of this particular—

**Ms Churley:** The idea here is that—

**Ms Mushinski:** I can understand the arguments you've given with respect to recycling; it's just that if you want it in this order, there may be times when a combination of the three may require a different order. I can't think of what it is right now, but—

**Ms Churley:** I hear what you're saying. My response is that for every material produced, the first thing that should be thought of and looked at is a way to reduce the production of that. You're right: in some cases, perhaps it makes more sense at the end of the day that the best or only way to deal with it is to recycle it. But what this is saying—it's reiterating that the order of priority should be, number one, to try to reduce. In some cases, you're right, it perhaps is not feasible. If that doesn't work, the next thing you look at is, "OK. If we can't reduce the production and consumption of this material, then how can we reuse it?" Last, if the solution can't be found in terms of the second option, reusing it, then you move to recycling, if that seems to be the only option that will work.

That's what I'm saying, that we have to start looking at it and that the end use should not always be, "Let's just throw it in the blue box and recycle it," but let's look at the first priority being to reduce. If that doesn't work,

then you move to reuse, and finally to recycling, if that turns out to be the only option. That's important, and that's why I did congratulate the government for getting these three in the right order. I think it's important to keep reiterating that that should be the priority. I hope that was clear. It's a bit convoluted.

**Mr Bradley:** I think we should perhaps be thankful for small mercies in that we have not had the government members trying to resurrect recovery. So I want to say something positive, in the first place, that I don't see the word "recovery," that fourth R, reappearing. I had this awful nightmare once that we would see that happen, and it hasn't, so I'm thankful for that small mercy.

1740

In regard to the amendment we have, I think it's a reasonable amendment in that it doesn't preclude the use of any of the 3Rs. It may well be that although reduction is what we would want to see happen first, reuse second and recycling third, it may be that a choice may be made to either reuse or recycle. The advantage of reduction, of course—perhaps a good example of reduction would be an additional layer of packaging for cosmetic purposes only. We want to ensure, for instance, that medicines have the appropriate packaging, and certain foods; we want to make sure for safety purposes that they are packaged appropriately. But it may be that for strictly cosmetic purposes or to make it attractive to the public to purchase, there's an additional layer of material put on in terms of packaging. There is where reduction would be best: that additional layer, whatever it happens to be made out of. If we could simply eliminate that, we are reducing, and that's the best. If we could reuse it, that would be second-best, and if we could recycle it, it's third-best. Sometimes recycling and reuse are fairly close. I think that's the point Ms Churley is attempting to make in the amendment.

**Ms Churley:** You mean I wasn't clear? Are you trying to clarify for me?

**Mr Bradley:** I'm trying to be helpful in terms of securing the support of some of the government members who may have misinterpreted what you are saying. That's clearly why it's important to have it in that order.

Again, you have words like "may" in there. It is important to you, I realize, that you can use one of the three. I think what the amendment does is put first in mind reduction, second in mind reuse, third in mind recycle. All three or one of the three or two of the three may be used, but it puts it first in mind. That's why I think it's a reasonable amendment and why I certainly would be supportive of it.

**Mr Arnott:** To reply to the suggestion and the amendment on behalf of the government, I would indicate that the focus of the proposed act is clearly identified in the title of the bill and in the proposed purpose statement, which has been passed by this committee, and that is to promote reduction, reuse and recycling of waste. In addition, this issue will be dealt with at the program level when the Waste Diversion Organization develops a program for a designated material. Again I would argue that

flexibility is required to choose the appropriate mix of solutions for any waste diversion program developed by the Waste Diversion Organization.

I would say to Ms Churley that, personally speaking, I think there is a desirable hierarchy in the 3Rs, which you have clearly identified your support for.

**Ms Churley:** Which I brilliantly pointed out. You could say that.

**Mr Arnott:** Yet I would also bring to her attention the fact that of the 10 wastes that we're anticipating will be designated for waste diversion programs—one, for example, fluorescent lighting tubes. It may be that it's very difficult to reduce their use at the current time because they're already in use and it would be best to consider recycling as the first option. I don't know exactly the technologies that are available, but there may be some of the waste that we hope to designate soon because they are problems and problematic, and the idea of reducing their use at the current time is such that we have to look at other options, and recycling may very well be the best option for a specific waste.

**Ms Churley:** I guess my explanation of why the hierarchy is essential in terms of making it clear what the priority should be wasn't as brilliant as I thought it was, because I'm not disagreeing with the need to be able to bring new products on stream, and there are some that would not fit under the reduction category, but it is essential that that be the priority, the first thing to look at, and then you move down the chain.

What happens a lot now and what we need to change, although it's slowly happening: we need a change in attitude, and don't skip to recycling right away, but look at the options for reducing, and if not reducing, then reusing. That's what we're trying to say here. I'm not trying to say that everything can be reduced or refilled. It's just making sure the government is clear in this bill that they see the hierarchy of the 3Rs.

**The Chair:** Any further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? The amendment is lost.

The next amendment is yours, Ms Churley.

**Ms Churley:** I thought that was a simple one. OK, where are we?

I move that section 24 of the bill be amended by adding the following subsection:

"Target waste diversion

"(1.1) A waste diversion program developed under this act for a designated waste shall provide for the reduction, reuse or recycling of at least 60 per cent of the designated waste."

The reason I have this amendment before us is that it gives an actual target. If you look at the bill and you look at this section, there isn't a target. The way I read it, the target could be 5%. So it's not nearly as vigorous a demand as we need, and I would hope people would see that there is a problem in not having a target there.

I see Mr Arnott is reading away, and he might give me an explanation as to why there is no specific target there.

**Mr Arnott:** In response to that question, I would say again to Ms Churley that there are 10 materials that are intended to be designated by regulation under the act, and I have read those out at least twice now, I think; at least once.

It is the contention of the government that flexibility is required, as it is impossible to predict the specific program targets for each of these materials, and they may vary. The act clearly provides for the development of objectives or targets as part of any waste diversion program. A proposed program must also address how the proposed targets will be measured. Specific targets, however, have not been set out under the proposed act, as it is expected that these targets will vary, as I have said, from program to program.

There are some materials where program targets will be well known—for example, tires—and others where the target will be more difficult to set at the start of the program. In requiring a program to be developed for a designated waste, the minister may set the target or require that the WDO or industry funding organization set the target as part of the program proposal.

Again, I think it's important that we recognize that for each of these designated materials and maybe others that will be forthcoming, they may not all have the same target at the outset. Certainly we would want to ensure the target is one that moves us forward in a positive direction, but also that it be realistic in terms of attainment. For that reason, the government is opposed to this amendment that the NDP have brought forward.

**Mr Bradley:** The virtue of a specific target—in this case 60%—is that it compels people to work toward that target and perhaps even exceed that target. I was under the impression that Ontario was supposed to reach a diversion rate of 50% by the year 2000. I think I'm correct in that, and I think we're at about one third right now in terms of diversion, if my figures are correct. The city of Toronto is even under that in terms of diversion.

So it seems to me that, yes, 60% is ambitious to some, but things have changed over the years. The technology is different; the knowledge is different. There has been a lot of innovation; again, some of it here in Ontario, some of it in Canada, some of it in Europe and other places. It seems to me that we have an opportunity here to set a specific and, I think, attainable percentage of 60%. If you had said 25 years ago that you were going to attain 60%, it may have been difficult. First of all, there wasn't a mindset in that direction because we were content as a society to simply bury or burn waste. That mindset has changed both in the public at large and in industry and business and municipalities, so that's very helpful.

I go back to the fact that with some of the innovations that have taken place, some of the research that has been done, we have discovered ways of reducing considerably, and recycling and reusing the waste.

I hear the division bells ringing at the present time.

I think it's a reasonable amendment, again—

**Ms Churley:** Will you support it?

**Mr Bradley:** —not a radical amendment, and I will be supporting this amendment.

**The Chair:** Thank you. Any further debate?

**Ms Churley:** We have to go for a vote, but I did want to point out—this pertains to this amendment and my previous amendment—as pointed out by Mr Gord Perks of the Toronto Environmental Alliance, that the problem with Bill 90 is that its incentives do exactly the opposite of what we're looking for in the 3Rs hierarchy. He says, and it's true, "The only option that costs an industry nothing is to ... have their materials go into landfill or incineration. This is the only no-cost option available. The second option, which is to go into a cost-shared program with municipalities for recycling, costs something on the order of 50% of the cost to the industry."

So one of the problems we have here both in why I moved my amendment before on the importance of the hierarchy of the 3Rs and on the cost sharing is that there is a fundamental flaw in the bill in that the incentives in it are the opposite of what you should have if you want to achieve the hierarchy of these 3Rs. So the amendment that was just defeated and this one are both very import-

ant. You've got to have a target, and not having a target is problematic.

We may continue this debate, I guess, next Wednesday.

**The Chair:** Is there any further debate at this point?

Seeing none, I'll put the question. All those in favour of this amendment?

**Ms Churley:** Recorded vote.

#### Ayes

Bradley, Churley.

#### Nays

Arnott, Miller, Mushinski, Wettlaufer.

**The Chair:** The amendment is lost.

The committee stands adjourned until Wednesday at 3:30.

*The committee adjourned at 1753.*





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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 21 November 2001

# Journal des débats (Hansard)

Mercredi 21 novembre 2001

**Standing committee on  
general government**

Municipal Act, 2001

**Comité permanent des  
affaires gouvernementales**

Loi de 2001 sur les municipalités



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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 21 November 2001

Mercredi 21 novembre 2001

*The committee met at 0910 in committee room 1.*

## MUNICIPAL ACT, 2001

## LOI DE 2001 SUR LES MUNICIPALITÉS

Consideration of Bill 111, An Act to revise the Municipal Act and to amend or repeal other Acts in relation to municipalities / Projet de loi 111, Loi révisant la Loi sur les municipalités et modifiant ou abrogeant d'autres lois en ce qui concerne les municipalités.

## ONTARIO CHAMBER OF COMMERCE

**The Chair (Mr Steve Gilchrist):** Good morning. I call the committee to order. My apologies for the delay in starting. Our first presentation this morning will be the Ontario Chamber of Commerce. Welcome to the committee.

**Ms Mary Webb:** Good morning. I'd like to introduce myself. I'm Mary Webb and I'm the chair of the Ontario Chamber of Commerce finance and taxation committee. With me is Atul Sharma, our vice-president of policy development.

We certainly thank the committee for the opportunity to make comments and recommendations with regard to Bill 111, the proposed Municipal Act. As many of you already know, the Ontario Chamber of Commerce is a federation of 156 local chambers of commerce and boards of trade across Ontario. Through this federation, the OCC represents over 56,000 businesses across the province and has been Ontario's voice of business since 1911.

The legislation governing Ontario's municipalities came into being a century and a half ago, and it is now antiquated. Since then, numerous amendments have made this legislation lengthy, complicated and prescriptive. The current act does not reflect today's realities and does not recognize the strategic resources required for urban growth management. It does not acknowledge the range of services municipalities are now providing for their citizens, nor does it provide a framework of accountability.

The Ontario Chamber of Commerce understands that encouraging and managing urban growth has become an increasingly important issue for Ontario. Municipalities must be partners in this management process. Consequently, cities require the ability to respond quickly

and effectively to changing economic and social circumstances. We therefore applaud the government for responding to the needs of Ontario and proposing a new Municipal Act. The OCC believes this act goes a long way toward balancing municipal demands for flexibility in exchange for increased accountability.

There are two primary aspects of this legislation that are of particular interest to us at the OCC, namely licensing and user fees and municipal corporations. We are fairly pleased with the overall legislation; however, we have some concerns and suggestions that we think could improve the final bill.

With respect to user fees and licensing, one of our chief concerns has been that the new legislation would give municipalities greater access to user and licensing fees as a source of revenue, placing an undue burden on businesses. We've advocated that a strong accountability framework would balance this increased flexibility in the proposed new Municipal Act, and we commend the government for incorporating these suggestions into the legislation. The proposed Municipal Act clearly states when a municipality can exercise its business licensing powers, particularly in matters of health and safety, nuisance control and consumer protection. Licensing fees would not be permitted to exceed the costs of administration and enforcement, and public notification would be required when a municipality wants to establish a bylaw, change fees or change the classes of businesses that are to be licensed. The Ontario Chamber of Commerce supports all these proposals.

The issue of inter-municipal licensing is one we believe the government should consider for further consultation. An example of this issue is whether a trucking company or an independent trucker requires a licence from every municipality they pass through. The Ontario Chamber of Commerce also supports the provisions outlined in the proposed act for public discussion of new user fees.

With respect to municipal corporations, the Ontario Chamber of Commerce believes that if municipalities are given the ability to establish for-profit corporations, those corporations must be subject to the same rules and regulations as private sector corporations. In a recent survey, our members indicated overwhelmingly—96% of them—that they favour municipal corporations being subject to the same rules as private corporations.

We also encourage the government to clarify the provision on the transfer of assets. Municipal assets that

are transferred to a municipal corporation should be transferred at fair market value so they do not constitute an unfair subsidy.

A very interesting example of the types of corporations that municipalities will be able to set up under this act is a downtown development corporation, a public-private partnership to enhance the downtown core. The potential possibilities with this new municipal corporation provision will be very interesting.

In summary, the Ontario Chamber of Commerce believes that the new Municipal Act provides a very solid foundation upon which the government can build through its municipal initiatives such as brownfield remediation, Smart Growth and transportation development. There are, however, sections that we mentioned that we would like to see clarified: the licensing procedures for businesses operating across municipal boundaries and the rules under which a municipal corporation acts. The OCC is confident that the final draft of the bill will effectively balance municipal needs with public accountability.

Once again, we'd like to thank you for this opportunity to present our submission.

**The Chair:** That leaves us about three minutes per caucus for questions. The first question will go to Mr Colle.

**Mr Mike Colle (Eglinton-Lawrence):** The question I had was, in this legislation there is quite a dramatic change in terms of user fee collection and imposition, in that if user fees are not paid by businesses or homeowners, that will create a lien against that person's business or property. Does the Ontario Chamber of Commerce support that extra onus or restriction on a person's real property?

**Mr Atul Sharma:** We haven't looked at that provision in particular, but what we did support was the fact that there was a more public process to the establishment of user fees. The OCC was one of the organizations advocating a three-pronged approach, that there should be different classes of user fees, some fees that do not require as much public consultation and ones that have greater impact upon businesses and individuals, which should be more fully discussed. That's the proposal we made. We didn't actually make any recommendation on the issue you've raised.

**Mr Colle:** Would you agree with me that the property taxpayers across Ontario should be notified that this change has taken place as a result of this legislation?

**Mr Sharma:** I'm sure there will be a number of things the public will need to be notified about through the legislation because it does represent some dramatic changes in certain areas.

**Mr Colle:** Will you let your members know that this change might impact on their businesses, that they may not only have a lien if they don't pay their property taxes, but also if they don't pay municipal user fees?

**Ms Webb:** Yes. In our bi-weekly newsletter we have a municipal affairs box and we keep our members apprised of just such developments as this very comprehensive Municipal Act. I think we also have to see it

from the standpoint of the municipalities. They are under an increasingly severe revenue squeeze with a lot of infrastructure needs that are not being met. Therefore, as long as the public consultation process ensures that these user fees are a fair representation of the cost to the municipality, they have to be borne by the people who are using them.

**Mr Michael Prue (Beaches-East York):** I have two questions, if I can get them in in three minutes. The first has to do with licensing fees. They're restricted to matters of health, safety, nuisance control and consumer protection. In the city of Toronto, licensing is also contingent upon the fact that it cannot be predatory on existing businesses. The best example is probably a hotdog cart setting up in front of a restaurant. That's excluded here. Do your members care about that at all?

**Mr Sharma:** I'm sorry. Predatory in what sense? That they buy and restrict them from being—

**Mr Prue:** In terms of businesses that set up a restaurant. They pay business tax and property tax, all the things in order to operate a restaurant, and then a guy comes along with a hotdog cart and sets up in front of them. This legislation will now allow that. Do your members agree with that? You've said these three things only. This is going to be pretty important to all the restaurants in Toronto; I don't know about other places.

0920

**Mr Sharma:** You'll probably hear representations from other people who have probably dealt with the issue more directly. In terms of licensing, what we have—again, the OCC was involved in the consultations in establishing the principle that licensing fees should not become a source of revenue for a municipality and place an undue burden upon businesses. With respect to regulating competition within businesses, we'd certainly be willing to take a look at that aspect of the act.

**Mr Prue:** Is there time for another question, Mr Chair?

**The Chair:** Very brief.

**Mr Prue:** OK, very briefly, the second one has to do with municipal corporations. Section 106 seems to deal entirely with your fear; it literally doesn't allow municipal corporations any rights at all. But we did have a group from Brantford Hydro, which came and talked about how difficult it would be for a public utility to live with this. Has your group thought about public utilities?

**Mr Sharma:** I think municipal utilities are incorporated under the Ontario Business Corporations Act and I think this will be discussed through the regulations consultations. But my understanding is that these municipal corporations will fall under the Municipal Act, so they may be regulated by different acts.

**Mr Garfield Dunlop (Simcoe North):** Welcome this morning to our general government committee on the Municipal Act. Needless to say, we're quite pleased with this piece of legislation. As the Ontario Chamber of Commerce, do you feel that this legislation brings municipalities in accordance with everything else that's

occurring in the 21st century? Is it an act that fits the 21st century?

**Ms Webb:** I think it's a first step. I think it does give the municipalities more flexibility, a flexibility that was needed. But yes, one of the reasons we struck a municipal affairs committee within the Ontario chamber was that we saw urban priorities and urban growth as almost one of the forgotten issues. So the Ontario chamber has been concerned from a number of different vantage points, and actually one of its primary concerns was the whole transportation/transit issue that led us to recommend a transportation authority. So is this a step in the right direction? Absolutely.

Similarly, the brownfields legislation was a very positive step in the right direction and we supported that as well. Is there further work to be done? Absolutely.

**Mr Dunlop:** Can you suggest to us right now what that work may be? What type of work would you like to see in the future for another step?

**Ms Webb:** I think where we're coming from is the whole issue of Smart Growth and how we best manage municipal resources. Going forward, I think we'd like to see much greater municipal accountability. We'd like to see how this act plays out and then respond. Our concern, of course, is in the considerable discrepancy in business taxes across the province. This has been just a huge issue for our members.

**Mr Dunlop:** So as a first step, the chamber is pleased with this.

**Ms Webb:** Yes.

**Mr Dunlop:** OK. Thank you very much for being here today.

**The Chair:** Thank you very much for coming before us this morning. We appreciate your comments.

#### STIG HARVOR

**The Chair:** The next presenter will be Mr Stig Harvor. Good morning. Welcome to the committee. Just a reminder, we have 10 minutes for your presentation.

**Mr Stig Harvor:** I called the office of the clerk of the Legislature two weeks ago to request an appearance before your committee. I was told a hearing would take place today but they could not tell me if I would be selected to appear. A year earlier, I had prepared a submission on another bill for which hearings had been promised. These hearings were cancelled on the pretext that the opposition had taken too much time to debate the bill. I was therefore not inclined to prematurely prepare my submission for Bill 111.

Late last Friday, a message from the committee was left on my message machine. I was told I could appear here today at 9:30. The message gave me four short days to prepare my submission.

Why do I mention these details of procedure? I do it in order to tell you that I am appalled by my present government's disdain for democratic debate and procedures. Ever since the government's infamous omnibus bill of 1995, upon its taking power, this government has degraded the democratic process to which our province had

been accustomed for many years and which we, the citizens, took for granted. This degradation has occurred both inside and outside the Legislature.

Bill 111 is only the last one in a long list of bills which is being rushed through the Legislature with only a token amount of time for detailed consideration and debate. It has been calculated that the time for a bill to become law under the previous provincial government compared to the present one today has been reduced by an astounding 80%. Time allocations for bills are now disturbingly common. Bill 111, a long, complex and important bill of 320 pages—and I have a copy of it here—was tabled only a month ago. A closure motion for November 28 was introduced three weeks later. So far, only around a dozen hours of legislative debate have been allocated, and in view of the closure, no further debate is possible on a bill which will have important consequences for the governance of our province.

This short time span seriously hampers public understanding of issues. It stifles public participation in the political process. It is an attack on democracy. This is serious. The government should be ashamed of itself. Only three days of public hearings will be held. It's interesting to speculate why a fourth day of hearings in Windsor was cancelled, allegedly for lack of interest. Could it be that there is not enough time to really study the bill, understand its effects and prepare for a hearing? Or could it be that many municipalities are intimidated by past actions of this provincial government and by the wide discretionary and possibly punitive powers of the minister still peppered through this bill? Better to keep quiet than have the minister bite you.

My concern with Bill 111 is primarily in its effect on my city, Toronto. Toronto has been seriously destabilized under the previous outdated Municipal Act. The present provincial government has taken advantage of the absolute power over municipalities conferred by our Constitution and the old act. It forcibly amalgamated my city and reduced its elected representatives by one half. Without prior notice, it then unilaterally chopped city council further by one fifth, to 44 councillors for a population of 2.4 million people. On this basis, North Bay, our Premier's city of 60,000 people, should have 1.1 councillors. Is this the government's common sense?

Additional serious interferences in the affairs of Toronto without consultation are numerous. I'll just touch on three: (1) downloading of services without adequate fiscal compensation; (2) limiting the municipal sources of revenue to the property tax and exempting businesses and industries from increases in tax; (3) abolishing rent control of vacant apartments and disallowing control of demolition of low-rental housing.

The provincial government has acted as if it knows best how to run my city. It treats me and my municipal representatives as children incapable of governing ourselves. This is plain arrogance. It destroys local democracy, which is a foundation of our democratic structures.

**0930**

What in the new Municipal Act, the new bill, will prevent such high-handed, unilateral, undemocratic actions

by this and future provincial governments? My understanding is that very little will change. Unlike changes made in some other provinces, our Ontario government will retain its absolute power over all municipal matters. Section 3 of the bill only "endorses the principle of ongoing consultation between the province and municipalities in relation to matters of mutual interests." Who defines "mutual interests" and what does "consultation" mean? If consultation means what happened in the three years since the draft of the bill was released, we're in for trouble.

The province received some 320 submissions. I'm told the submissions have not been published nor responded to. No information is available on the discussions at the 13 meetings which were held, significantly limited to only municipal and business representatives, probably like the chamber of commerce that just preceded me.

It is indeed remarkable that a city like Toronto, which is larger than six of our provinces, contains over 20% of Ontario's population, creates 20% of our national wealth and contributes billions of dollars in taxes to our provincial and national governments, should be treated like a child by the province. Why is it that MPPs anywhere in our province should have unlimited power to run Toronto? Does the rest of the province know more about the needs of Toronto than those of us who live here? This of course also applies to every other city in the province.

Present attitudes of our provincial government have led to calls by informed and concerned Toronto citizens for a city charter for Toronto. The charter would convey certain powers upon the city to allow it some autonomy and flexibility in its affairs. There are even citizens who advocate a new province, the province of Toronto.

Bill 111 fails to respond to these legitimate concerns. What is lacking in the bill is a definition of municipal powers which will enable municipalities to act autonomously in certain vital areas. Yet sections 299 to 303 take us in the opposite direction. They empower the provincial minister to require any municipality, its boards, committees and agencies to meet standards of "efficiency and effectiveness" set by the minister. If they fail to meet these standards, the minister can cut funding of any kind and even demand the return of funds already paid. Talk of municipal tutelage.

In today's and tomorrow's world, large municipalities like Toronto play an increasingly important role in the provincial and national life and economy. They become centres of wealth generation, innovation and culture. It's in the interests of everyone, whether they live in cities or not, that cities have the financial resources and administrative flexibility to create liveable, lively, stable and healthy communities. The cities must be free to allow their citizens to make meaningful choices in how they will govern themselves and allocate their resources.

To conclude, Bill 111 is a long-overdue updating of the 149-year-old Municipal Act. The updating was needed, but the process was and is flawed. The new bill has some positive aspects but does not go far enough. Above all, it fails miserably in the vitally important re-

definition of the basic relationship between our province and its municipalities.

Bill 111 must not be passed in its present form.

**The Chair:** Thank you very much for your presentation. Our next presenter—

**Mr Harvor:** How much time did I take?

**The Chair:** You've actually gone a minute and a half over your allotted time. That's how dictatorial we are. Thank you very much for your presentation.

**Mr Colle:** Mr Chair, perhaps—

**The Chair:** No, you don't. The next presenter will be the Toronto Board of Trade.

**Mr Colle:** On a point of order, Chair—

**The Chair:** Yes, what is your point of order?

**Mr Colle:** Sorry, but as a member of the committee I have the right to make a point of order, do I not?

**The Chair:** That's right. I'll entertain a point of order.

**Mr Colle:** Fine. May it be possible for the Chair to notify the presenter that they have one minute left so that, therefore, they can either wrap up or perhaps stop at that time for questions? Is that possible?

**The Chair:** That's an excellent suggestion. Were it the case that the presenter was not going to be able to present their whole written brief, as we had before us, I would have made that interjection. Instead, I allowed him the time.

**Mr Colle:** I would think it would have helped just to indicate.

**Mr Harvor:** It would have been helpful, Mr Chairman, if you had told me before.

**The Chair:** Thank you.

The Toronto Board of Trade will be our next presenter.

**Mr Harvor:** I feel you're being excessively strict here, perhaps because I don't agree with some of the things you are doing.

**The Chair:** No, it is because we like to respect the time that's been allocated to all the individuals. Sorry that you feel—

**Mr Colle:** You were late coming here, Mr Chairman.

**The Chair:** He got 1½ minutes, Mr Colle.

**Mr Colle:** If you'd started on time, we wouldn't have had this problem.

**The Chair:** Bizarre thinking. You're dismissed, Mr Harvor.

**Mr Colle:** To start on time is bizarre?

**The Chair:** You weren't here either.

**Mr Colle:** I was here; you weren't here.

**The Chair:** Mr Harvor, thank you.

**Mr Harvor:** As a citizen, I find it quite disturbing the way citizens are treated these days.

**The Chair:** No doubt.

#### TORONTO BOARD OF TRADE

**The Chair:** Now we will have the Toronto Board of Trade. Welcome to the committee.

**Ms Elyse Allan:** Good morning. Thank you very much. My name is Elyse Allan. I'm president and CEO

of the Toronto Board of Trade. With me today is Louise Verity, our director of policy. We are both here to present to you and answer any questions you might have. We appreciate the opportunity.

At the outset, we would like to congratulate you on the process that led to the introduction of the act. The Minister of Municipal Affairs and Housing played a very visible role in the consultation process and was genuinely open to many of the ideas coming forward, many of which have been captured in the legislation. The Toronto Board of Trade was pleased to have actively participated in the consultations leading up to the introduction of this legislation. We provided input to numerous consultations covering several areas, including a number of sessions on municipal business licensing, meetings of the committee on municipal debt issuance and investment policy, and a session on municipal corporations.

Our comments today are going to focus on three key areas where we continue to have some concerns: municipal business licensing, municipal financing flexibility, and the area of municipal corporations.

While we do support the legislation in general, the board of trade continues to have concerns related to questions of clarification. Some of these concerns will no doubt be answered as the regulations supporting the legislation are drafted. There are specific areas, however, particularly around business licensing, that require some immediate clarification prior to the legislation being passed.

It is clear that some genuine compromises have been made in the municipal business licensing area. The act would continue to allow municipalities to license businesses, but would specify that municipalities could only exercise their licensing powers, including imposing conditions on licences, for the purposes of health and safety, nuisance control and consumer protection. We have been told that certain businesses will continue to be exempt from municipal licensing and that others will be exempted by regulation. We believe it is extremely important that the list of businesses that will be exempt be tabled immediately, prior to the passage of the legislation. Many of our members—for example, the hotel and trucking industries—are good examples. They are looking for additional reassurances that they will not be subject to inconsistent and onerous new licensing fees.

Our members are also looking for clarification of the scope of licensing powers for municipalities surrounding health and safety, consumer protection and nuisance control. We would also like clarification that where there is a defined provincial interest, a municipality would not be involved. We support the guarantee under the legislation that licensing fees would not be permitted to exceed the costs of administration and enforcement. This will ensure that licensing fees do not become a hidden source of municipal revenue. We also support the requirement for public notification when a municipality wants to establish a bylaw or make a change in licensing fees or in the classes of businesses that are to be licensed.

We do remain concerned that there is no appeal process set out in the legislation. Businesses and individuals should not have to proceed immediately to litigation if there is a dispute with a municipality over the fairness or reasonability of a fee or charge. We believe a solution would be to reinstate the right to bring these disputes over a fee or charges to the Ontario Municipal Board.

In the area of finance instruments, reforming the Municipal Act provides the opportunity to give municipalities the flexibility they need to better manage their own finances.

#### 0940

The city of Toronto is under enormous pressure to fund core services and promote economic development. Affordable housing, accessible transit and cost-effective services create significant budget challenges. Right now, the majority of municipal spending must be financed on the backs of property taxpayers. We have long argued that our large urban centres need greater access both to the wealth they create and to new sources of revenue generation. A fundamental requirement for enhanced revenue generation is the ability of municipalities to implement creative and flexible financing arrangements, both with other levels of government as well as with the private sector. Regrettably, the legislation does not go as far as we would like in this area. This is due in part to the scope of the legislation, as well as the fact that I guess some of the debt and investment provisions in the legislation are to be dealt with later in the regulations.

We believe there are workable solutions that should be included in the legislation. We have argued that municipalities should be able to dispose of assets while they are still required for municipal purposes. Their inability to do so has prevented municipalities from taking advantage of opportunities for sale and leaseback of assets. We have also pressed for the ability to use secured debt to raise funds. Municipalities are currently limited to debentures or short-term debt. This places significant limitations on their ability to raise capital for large-scale infrastructure reinvestment. Finally, we have also asked that municipalities be permitted to depreciate capital equipment and sell the allowances to the private sector. This is a potentially huge source of cash flow for cities, as it creates revenue for custodians of municipal assets. We understand that regulations may be drafted that would address some of our recommendations in this area.

In the area of corporations, we are very pleased that the legislation opens the door for the creation of municipal corporations. Under the existing legislation, municipalities cannot form municipal corporations, with the exception of those permitted under the Energy Competition Act. We have argued that this has been a lost opportunity for outsourcing and partnerships with the private sector. Again, however, all of the conditions and purposes for which corporations would be permitted are to be set out in the regulations. We are concerned that the conditions under which municipalities may be able to form corporations will be too restrictive. We urge the province to allow municipalities flexibility with respect

to the extent to which the private sector participates in municipal corporations.

Municipalities should also have the power to adjust the level of private sector involvement as experience accumulates and circumstances change. The board of trade believes it is extremely important that there is a prohibition against bonusing or any other preferential treatment for municipal corporations. While municipalities should have the ability to create municipal corporations, there should be adequate safeguards to ensure these corporations are treated similarly to private sector corporations for taxation purposes. It will be important to ensure that any transfer of assets to municipal corporations is at fair market value and is not treated like a subsidy. Our concern here is that municipal corporations will receive preferential treatment at the expense of the private sector rather than competing on a level playing field. This is clearly a section of the legislation where much more work is required. We welcome the opportunity to continue to work with the government in the development of regulations governing corporations. We also look forward to our ongoing participation on the committee on municipal debt issuance and investment.

In closing, we urge the government to be as inclusive and consultative in the development of the regulations to the Municipal Act as you have been in the development of the legislation. It is critical that you move very quickly to clarify the business licensing provisions prior to the passage of the legislation and seriously consider an appeal process to avoid unnecessary litigation. There remains much work to be done in the area of municipal finance. While some of our recommendations on municipal finance may go beyond the scope of the legislation, it is vital that the regulations governing debt and other financial instruments are very thoroughly evaluated. To that end, the Toronto Board of Trade looks forward to contributing to ongoing consultations as the regulations to the Municipal Act are developed.

Thank you for your time.

**The Chair:** Thank you very much. That affords us just under four minutes per caucus for questions.

**Mr Prue:** I asked this same question of the chamber of commerce before you arrived. It goes back to the conditions under which municipalities can issue licences. As you have correctly said, the licences can only be issued in matters of health and safety or for consumer protection. What it leaves out is licensing which has been used by some municipalities, particularly Toronto, to stop people from using unfair commerce. The best examples I think I can give are hot dog stands in front of restaurants or ice cream trucks in front of a Dairy Queen. The municipalities do not allow for that, and this right is going to be taken away. Does your group have any problem with this as far as business is concerned, that municipalities will no longer be able to regulate?

**Ms Allan:** I actually don't think we have looked specifically at that instance. We've been looking at what is included, not perhaps at what has been missed. At this point I'll ask Louise, but my sense would be that we

could take that back to our members very specifically because I'm sure a lot of the BIAs would have very specific comments on that.

**Ms Louise Verity:** I would just echo Elyse's concern. It isn't something that our municipal affairs committee has considered at this point. It's probably something, after hearing the concern raised, where we would look to talk to our friends as well at the city of Toronto to get an understanding, now that they've had a chance to look through the bill as well and understand what some of the implications are, as to what some of the limitations and restrictions may be as a result of the act as it is currently written.

One of the things we are looking for that may help in this regard is some clarification around the application of municipal business licensing fees. I think once we get that sort of information straightened out, both in terms of what's allowed under the act and what happens now that will be allowed to go forward under regulation and what is already under an existing provincial act, that may perhaps clarify some of those sorts of questions.

**Mr Morley Kells (Etobicoke-Lakeshore):** I only have a few comments and then I'm going to turn it over to the honourable member beside me. I do appreciate your second paragraph, where you comment on the process and the fact that the government did allow a great deal of process to be taken into our consideration of the Municipal Act, which somewhat flies in the face of the testimony of the previous person.

Actually, I haven't much to say. It's a very well-rounded presentation. In your comments and your worries about the appeal, I think you've talked about reinstating the appeal process to the OMB, but it never was there, to my knowledge. As you know, the OMB is kind of a long-drawn-out process, trying to get before them. I think you might be better with the courts. But I think you make a very good point that maybe there should be some kind of appeal that should be triggered if there's a conflict right at the beginning of a request. I think we will take that into consideration and discuss it, and you might see it reflected in a reg or somewhere.

**Ms Allan:** Just to comment, the OMB would not necessarily be the preferred route. On the other hand, right now it's the only existing route that the group felt, or that our committee and members felt, at least, was there and we could offer as a very real solution, because we do believe there should be an appeal process. But perhaps there is some alternative option that could be brought forward.

**Ms Verity:** The OMB is not necessarily seen as a desirable place to go as well. It can take a long time to get there, and quite often the proceedings themselves take a long period of time as well.

**Mr Kells:** I appreciate those comments, because we have to deal with that continually. I guess the huge criticism of the OMB is the time it takes to get before it and the time it takes to get a decision.

**Mr Dunlop:** Welcome this morning. This is an excellent presentation and there are some very positive comments you've made in that.

I'd like you, if you could, to talk just very briefly about the role you had in the consultation leading up to this. I know we've talked about the Municipal Act for decades, a new Municipal Act in the province. In more recent years, and particularly, say, in the last 10 or 15 years, can you tell us the type of role you've played in the consultation process leading up to this? Because there's no question the government of the day feels very strongly about the support of the board of trade in this particular piece of legislation and your input. Could you just elaborate a little more on the consultation that has actually taken place?

0950

**Ms Allan:** Yes, thank you. I'll ask Louise to join too, because there were so many areas that we participated in. I guess I'll comment generally on the overall process, in which there were many direct consultations. Another thing which I think was quite pleasant to see from the person in this role was that the minister himself participated in so many of the consultations and actually would come back to you, call afterwards, and discuss issues that were raised, or staff would follow up on very specific issues, and that was happening with everyone involved in the consultation. So it was a very engaging process and one which had all members of the ministry, including the minister himself, quite involved.

There were a number of very specific committees around financing, the committee on debt issuance, as well as specifics around business licensing, where there were subgroups that were working, or specific topics, all of which we were participating in both as staff as well as volunteer committee members. Louise?

**Ms Verity:** I would just perhaps add that the parliamentary assistant and certainly the staff—the ministry staff as well as the political staff in the minister's office—have been very open.

Our tenure really is only over the last five years or so, but looking back over time it's certainly something that the governments of the day have been fairly open on, but it's really this minister and this government that have shown the willingness to move forward in an expeditious type of way. That's certainly something that, from the business community's perspective, we are very appreciative of. But I would also temper that with the fact that there are some major areas in the legislation that do require some more work, so we're expecting that to continue and are looking forward to participating in that process as well.

**Mr Colle:** I have the same question I asked the Ontario Chamber of Commerce. Is the board of trade in support of the new powers to impose liens on people's real property if they don't pay the new municipal user fees?

**Ms Verity:** I would say on that particular element, that isn't something we have discussed in detail. I think you can probably appreciate the fact that the act itself is a 295-page document, and so we have not considered absolutely everything. But from a business perspective, I guess we're caught on both sides. The first is that, as any

viable business, and the board of trade is certainly an example of that, we want to make sure we can continue to be viable and offer services to our members by ensuring that we are collecting our membership fees and that people are paying up. So I think this is something we should also perhaps look at. It isn't something that at this point we had considered.

**Mr Colle:** This wasn't discussed in your wide-ranging deliberations with the minister?

**Ms Allan:** It may have been brought up; it's just not something that, when we've brought it back to our committees and our members, we have then taken a position on. There were so many different areas. The ones that we've spoken to you about are the ones that we tended to spend the most time on and have consensus on a decision. But we can bring this back for comment and certainly provide input to it.

**Mr Colle:** I would appreciate that.

**Ms Verity:** I would say too that we have genuine appreciation for the city of Toronto and the budget constraints and the challenges there to deliver the kinds of services that are expected. So I think the act itself has to be flexible, and this is something that has been provided after some consultation. So we can understand why it's there. I think we would have to do some further due diligence with our own members and our committee—

**Ms Allan:** And the city.

**Ms Verity:** —and the city in order to respond appropriately to your question.

**Mr Colle:** I have another question. The Premier of British Columbia is leading a movement across Canada to basically recognize municipalities with charter rights as a recognized government entity, which isn't in this act. Secondly, he's also proposing the prohibition of downloading by provincial governments on municipalities. Does the board of trade support those two British Columbia initiatives?

**Ms Allan:** No, we have not supported those initiatives. We believe we can work within the frameworks that exist to get the support that's necessary.

**Mr Colle:** So you don't support the restrictions on downloading by provincial governments on municipalities?

**Ms Allan:** I don't think, in sort of a general mandate like that—no, we would not. I think that downloading can be successfully achieved if one looks at the balance of what's coming with that downloading. I think I would agree—and we have worked with the other major cities. We accompanied our own mayor to meet with the five major cities in terms of looking at what we have in common and where we might want to be making joint requests to the federal and our own provincial governments. There are a lot of best practices that the cities can share with one another with respect to arrangements they have set up with their province to meet their own particular needs.

**Mr Colle:** If I can get that straight, the board of trade is saying you don't oppose downloading, whether it be

by the provincial or federal government, on to municipalities? The board of trade isn't opposed to that?

**Ms Allan:** You asked if we were supporting the current efforts that the BC Premier is making.

**Mr Colle:** No, no. Then I'm asking you about downloading specifically.

**Ms Allan:** With respect to the downloading that occurred, we were not supportive of social services, for example, being moved on to the property tax. We did not support that and we continue not to support that move. But in terms of general downloading I think we have to understand the specifics that one is talking about.

**Mr Colle:** So you don't have a problem with putting in a general rule which prohibits or would oppose unilaterally the downloading of services on municipalities.

**Ms Allan:** The board's position on downloading over the past several years was very much specific around social services because we felt it was inappropriate—

**Mr Colle:** So other kinds of downloading would be permissible, but social services you would be against.

**Ms Verity:** Just also to perhaps help in responding, I think the question itself is leading. There is a lot more to it in terms of legislating something like this. Elyse, with her colleagues, as heading the larger chambers across the country—we have been actively working with them to ensure that cities the size of Toronto receive more in the way of their fair share from the federal government as well.

On the issue of downloading, originally, back in 1996 when the legislation and the Who Does What exercise were implemented, the board was actually very active in a very public way and in a way that actually resulted in some positive ends on that. We actually were very successful, I think, in getting the government to change its position there. So I don't think it's fair to say that the board supports downloading, because we don't. But are we looking at bringing in legislation to accomplish that? At this point, we're certainly not.

**The Chair:** Thank you very much for coming before us here today. We appreciate your presentation.

#### ASSOCIATION OF MUNICIPALITIES OF ONTARIO

**The Chair:** Our next presenter will be the Association of Municipalities of Ontario. Good morning and welcome to the committee.

**Mr Pat Moyle:** Good morning. My name is Pat Moyle. I am the executive director with the Association of Municipalities of Ontario. I am joined by Pat Vanini, our director of policy and government relations. Ann Mulvale, our president, unfortunately is out of the country on a one-week vacation and we are subbing for her.

Ann asked me this summer if there would be any AMO business to be attended to during the week of November 19. I assured her there was nothing pressing and that most certainly there was no need for her services for anything related to a new Municipal Act. I based this

comment on history. You see, the discussions around the need for a new Municipal Act and what should be in the document began on September 6, 1899, in Hamilton. At that first meeting of AMO, mayors from across the province met and determined that the Baldwin Act of 1849 was old, outdated and too prescriptive.

As they boldly looked ahead for the challenges of the approaching new century, they asked the Premier in 1899 for a new deal. The discussions have now spanned three centuries. So when Ann Mulvale asked me in July of this year if the third week of November was a good time for a vacation, the furthest thing from my mind was a standing committee presentation on, of all things, a Municipal Act, after 102 years of talk. But here we are, and the phrase "Better late than never" comes to mind.

AMO's former president, Mayor Hazel McCallion, who will be addressing you later, remarked on the day this bill was introduced that she couldn't believe it was actually happening. Our current president, Mayor Mulvale, has worked for the past six years on a number of provincial and AMO committees to develop a new act. She is very disappointed that she is unable to personally attend the hearings today.

Our members have asked, "Is this bill better than the 1998 draft Municipal Act and should the municipal sector support it?" Our answer to them is yes, Bill 111 is better than the proposed 1998 version. While it is not the complete framework that we envisioned based on the Crombie panel's recommendations of 1996, it is clearly a better starting point. Hopefully it will continue to evolve over time.

AMO's submission will focus on what this new Municipal Act represents and recommendations for improving it. However, before doing so, we want to discuss timing. We encourage you to proceed with this bill as quickly as possible. AMO understands that some members of the House were concerned with proceeding with passage of the legislation this session. Why does this act need to proceed at this pace? There are two fundamental reasons.

First, AMO, through its interaction with other provincial municipal associations, is well aware that Ontario is one of the few provinces that continues to operate in a very prescriptive environment when it comes to its Municipal Act. Many of the other provincial governments have extended enabling powers to their municipal governments through natural person powers and have clarified shared responsibility. Such a legislative framework provides those municipal governments with the ability to respond to local needs as local needs demand. Creative, timely solutions to purely local issues are a greater privilege as a result.

#### 1000

Ontario's municipalities need to benefit sooner, not later, from such a governing framework. This bill does not make Ontario the leader in terms of municipal empowerment, but it does put us in the middle of the pack, so to speak. It means that our mutual success will come from mutual respect and trust. It means that we will have to work better together and in better ways.

Secondly, municipal governments will need sufficient time to implement the legislation and its associated regulations, and this will require education and training of both elected and staff officials. If additional time is taken to consider this bill, then the effective date of January 2003 would have to be pushed back to 2004, which is a long way in the future. It is also coincident with the next municipal elections and incoming councils' deliberations on municipal budgets. Having to implement a major piece of legislation at the same time would be overly burdensome. We urge this committee and the House leaders to get this bill into the House for third reading debate as soon as possible. There is a great deal of work to undertake to ensure the municipal sector is prepared for its implementation.

On another related matter, there will be a number of policy suggestions and technical issues raised by parties appearing before the committee. AMO has relied on several municipal staff associations—the Ontario municipal administrators, the AMCTO, the municipal finance officers and the Ontario Good Roads Association, to name but a few—to undertake a detailed technical review of the bill. We are leaving it to those groups to put forward technical amendments for the committee's consideration. In addition, our board has put forward a number of improvements regarding the licensing regime, and they have been forwarded to the ministry under separate cover. AMO strongly urges the committee to implement as many of these technical amendments as possible. If timing is such that this becomes difficult, then it could be part of the future companion piece of legislation. But we need to get the framework in place now.

AMO's comments that follow will deal with the more substantive policy areas of the new act, what they mean and what improvements we are seeking.

The first question is, what is this Municipal Act about and how can the bill be improved? The act is about municipal governance and administration on day-to-day matters and how two orders of government should relate to one another.

The current Municipal Act is about one order of government, the province, directing the municipal order of government what to do, how to do it and when to do it on virtually every aspect of municipal responsibility. If municipalities can't find the authority to act in the current legislation, chances are they don't have the authority and must seek legislative recourse, and everything that entails, to address the problem. Often it has meant convincing the government of the day that the matter was of critical importance, with response in a government bill, or to seek a private member's bill or private legislation.

To many people, it makes little sense for the provincial Legislature to spend its time and resources on local issues when there are many pressing provincial matters, so Bill 111 should be about relieving the provincial Legislature of local issues. Therefore, one indicator of the bill's success will be a reduction in the many amendments that the current act has experienced.

This and the need for flexibility to deal with local circumstances are some of the rationale for moving to natural person powers, which AMO supports. Natural person powers were contained in the 1998 draft. As well, however, it was accompanied by a provision that we have termed the "notwithstanding" clause, which proposed to give the minister the authority to basically rewrite legislation by way of regulation. We are pleased to see this particular provision eliminated from the bill and clarity brought on matters of pure local interest—the 10 spheres of jurisdiction—versus those interests shared with the province.

Time will tell whether this legislation has enough flexibility for municipalities to be responsive to the changing circumstances and to deal with future unpredictable situations and needs. As with our comments in 1998, we must point out that we think the natural person powers approach could have been more fully applied in sections to further eliminate the continuation of existing provisions that direct authority and set out conditions. We recognize that while the Ministry of Municipal Affairs and Housing has embraced this approach, it may have been more difficult for other ministries. Perhaps over time and as a result of municipal performance under a new legislative framework, these ministries may want to join us in a re-examination of the detail that remains in the bill.

AMO recommends that a provision be added to this bill that requires a review of the legislation and the regulations every five years from the date of proclamation. Other provinces are proposing the expansion of municipal autonomy, particularly British Columbia, and a requirement for review in five years will permit Ontario and the municipal sector to learn from those experiences and adopt them if they are appropriate.

In the absence of any regulatory review, then the regulations would sunset unless the review indicates otherwise. Considering that the current act, which this bill is to replace, has been in existence since 1849, good public policy would best be served by an obligated review process. Let us ensure that the next iteration of the Municipal Act is not another 150 years in the future.

As previously mentioned, the bill is about how the two orders of government should relate to one another. AMO undertook a survey last year on the state of provincial-municipal relations and indicated that better communications, better consultation and recognition of the municipal government's role are critical to improving government relations. In every speech and at every meeting with government members on both sides of the provincial Legislature as well as in Ottawa, our President, Ann Mulvale, speaks of the one voter. She notes that the one voter elects all three orders of government and expects their governments to work together, to collaborate, to anticipate problems and to put solutions in place before the problems become too big. The public has little patience for finger pointing and foot dragging.

AMO is pleased that this bill, for the first time, recognizes municipalities as a responsible governing body. For

the municipal sector, this provision, while simple in words, speaks volumes in meaning, particularly when accompanied by the prior-consultation provision. We can all identify areas of policy development at the provincial level that would have benefited from government-to-government discussions and a municipal perspective on possible implementation impacts. Getting it right from the beginning makes more sense than trying to fix it afterward or having to live with unintended consequences.

AMO is supportive of the memorandum of understanding as a vehicle for confirming a pre-consultation process between the two orders of government. AMO's goal is to conclude the memorandum as quickly as possible. As a sign of good faith, Minister Hodgson has agreed to consult the municipal sector on the key regulations required by the act. Certainly, having the regulations available now in draft form would be preferable, as it would lend more transparency to this legislative process. Since the opposition parties have reflected on the advantages of pre-consultation, AMO assumes, should they form the government in the future, that a similar MOU would be one of their initial actions. However, to guarantee this, the principle of an MOU should be enshrined as a provision in this bill.

**Ms Pat Vanini:** While many parts of this bill have not changed substantively since 1998, there have been some positive changes that have resulted in a higher confidence of the business sector, which was lacking in 1998. Through several working groups with municipal representatives as well as business groups, including the Ontario Chamber of Commerce, the boards of trade and the Canadian Federation of Independent Business, difficult discussions resulted in some consensus building on licensing and user fees, among other matters. In fact, it was AMO's previous president, Michael Power, who convinced the then minister, Tony Clement, to have all parties at the same table rather than dealing with us separately. It is clear that the legislative framework for these areas benefited from working together.

In the spirit of supporting business, we offer the following recommendation: that the three categories for licensing powers in subsection 150(2) of the bill be clarified to cover all of those situations for which municipalities presently and legitimately license. For example, many municipalities license transient traders, which may benefit the consumer but are not fair to local businesses that pay taxes and participate in the life of a community.

We also encourage an amendment to the licensing section that provides for an amalgamated municipality to retain any special powers granted any one of its previous parts and to apply it to the new municipality. The incorporation of such authority to the other parts of the new municipality should only require a decision of the council, not legislation.

As mentioned previously, this act is about the day-to-day management of municipal corporations. A good part of this management flows from its financial management

and accountability. In terms of the former, we are pleased that the legislation and related regulations will provide additional investment tools and added flexibility for smaller municipalities to participate in pooled investment opportunities. Having the municipal property tax dollar earn a higher rate of return will benefit the taxpayer.

On the accountability front, there is no level of government that is more accessible and more accountable to its taxpayers. Bill 111 continues many of the existing accountability provisions and adds two new ones: (1) the improvements in the efficiency and effectiveness of service delivery and (2) identifying barriers to achieving efficiency and effectiveness. AMO sees no fundamental difficulty with these, as oftentimes municipalities do see opportunities for improvements, but just as often they do not have the ability to make those improvements, as there are barriers at either the federal or provincial level. When viewed as a way to identify and then motivate change at other government levels to improve services to the one voter, these provisions are supportable measures.

Given the accountability measures in Bill 111, the municipal sector sees absolutely no need for it to be captured by Bill 46, the proposed Public Sector Accountability Act, or, for that matter, the proposed private member's bill, Bill 95, the Ethics and Transparency in Public Matters Act. Having several pieces of legislation that deal with the same policy area will be confusing, cumbersome and will create such interpretative issues that the courts may be petitioned.

In line with this accountability and recognizing the close and needed relationship between municipal government and the communities they serve, AMO is recommending that the bill be amended to ensure that all municipalities, from the largest to the smallest, have the authority to redefine ward boundaries. It is not fair to treat some municipalities differently from others. Every municipality should be able, in consultation with its citizens, to determine the internal governing structure that makes sense over time. Resting some of this authority with the provincial government for parts of Ontario is wrong.

#### 1010

As well, there are new provisions around restricting the authority of councils during a municipal election. While the current act says a lame duck council cannot hire or fire a municipal senior official, this bill extends that to all employees. This could make it very difficult to carry on business, including those mandatory services that we are regulated by the province to deliver. We do not believe this was the intent and recommend that this particular reference be deleted. This action is preferable when the alternative could be legal disputes that authority for this could or could not be delegated. Clarity before passage is the preferable course.

We are also supportive of the ability to have municipal service boards and joint municipal service boards. The latter would certainly facilitate combining expertise and resources related to services while ensuring accountability and without the need to restructure municipalities.

Having spoken to some of the policy matters within the act and some improvements, we recognize that this act could not deliver on several matters, which we would like to briefly discuss.

First, we knew this act was not going to reshape the local services realignment arrangement. While a municipality, as the government closest to the people, does deliver quality services, it does not make sense that social and community health services are financed through property taxes. Services to property funded by property taxes does make sense. Social services, particularly given a looming aging society and the effect of the global economy on incomes, should not be funded by a tax envelope that is rather rigid. To the government's credit, we are seeing some changes in how these services are being funded. However, AMO will continue to press for the uploading of these costs as well as new financing arrangements and new revenue sources.

Second, we knew this act could not deliver on charter status. We recognize that this concept is important but it also has federal and provincial constitutional elements attached to it. We need to have a full tripartite discussion of our respective problems and solutions if Ontario's municipalities are to remain globally competitive and continue to be quality places in which to live and work.

Finally, we knew this act would not change the current property assessment and taxation regime. This is not to say that there are not changes needed. AMO supported the move to market value assessment, but some of the government's subsequent policy decisions have created a very complex, confusing and difficult property taxation system that needs fixing still. We will continue to advocate for remedies so that we can get to a market value system sooner rather than later in many parts of Ontario.

We hope that the recommendations we have offered, along with the technical comments of the municipal staff associations and member municipalities, will be adopted by the committee or find their way into a companion act in the future. Given the size of this act and in the absence of an available cross-reference, there very well could be additional technical changes to make to the legislation in order that it be clear and concise. We expect that as we continue to become more familiar with the legislation we will continue to identify some of those needs.

Having said this, we do need to get on with a new governing framework for municipal government in Ontario, a more modern framework that allows municipal government to manage many of its daily operations based on local needs and local circumstances. Ontario is noted for its diversity, from rural to urban, from northern to southern, based on its geographic differences, its demographic and cultural makeup. Local governments must operate within all of these opportunities and challenges. Bill 111 is the right step in the right direction. It could be better, but it definitely is an improvement from the 1998 proposal. Bill 111 is a good springboard that will allow us to further evolve a legislative framework that supports municipalities as a responsive order of

government in the 21st century. Thank you for your attention and your consideration.

**The Acting Chair (Ms Marilyn Mushinski):** Thank you for your presentation. There are about three minutes for questions. We'll start with Mr Colle.

**Mr Colle:** Is it the government's turn?

**The Acting Chair:** No, it's Mr Prue. My apologies.

**Mr Colle:** I think it's the government.

**Mr Prue:** I'm sure it is. I started the last question.

**Mr Colle:** Yes, it's the government's turn.

**The Acting Chair:** We'll start with the government side. I was attempting to be fair and reasonable to all.

**Mr Kells:** Thank you, Chair. Actually, there's one basic thing I would like to comment on and that is your comments about timing. I assure you, speaking on behalf of the government, that we have plans to pass the Municipal Act this session. As long as the process stays in place, that will be done. Your comments on why it's important are well taken, and the government agrees wholeheartedly and will pursue that. Other things that may be needed around this bill that are related to this bill could be in a companion act, and that could be done in the spring. I would like to comment on the 149 years, because it keeps coming up as a recurring theme.

**Mr Colle:** Were you here all those years?

**Mr Kells:** I know a little about it, but I wasn't here. I had some relatives who were.

Actually, as you know, back in those days governments didn't sit very often. I would like to point out that there were a couple of world wars and a major depression. In about 1950, our government of the day proceeded to rebuild the province. In that process, we learned the hard way that when you start tinkering with municipal affairs, you disrupt a lot of people and you lose a lot of votes. If I recall correctly, when I was around here in the 1970s, every time we did one of those amalgamations or whatever, we invariably lost a seat for 20 years. So there are some pressures that played upon government.

I would like to point out too that our government has been in power for 40 of the last 50 years. But from 1985 to 1995, the opposition was in power and had plenty of opportunity over that five-year period for each of them to address these problems and changes that need to be made. We understand the criticism, but I'd just like to somehow try to put the 149 years to rest. Let's deal with the future.

**Mr Dunlop:** I appreciate the efforts. As a former municipal councillor for a number of years, I've seen the demands for a new Municipal Act in the last 20 years. I just want to congratulate all the members of AMO and President Mulvale for her efforts in helping the government form this piece of legislation.

**Mr Moyle:** We'll certainly pass that on. Thank you.

**The Acting Chair:** Thank you for your presentation this morning. There isn't time for another question, unfortunately, Mr Colle.

**Mr Colle:** We have to have equal time.

**The Acting Chair:** No, I'm sorry, there isn't time. We will start with you next time, Mr Colle.

**Mr Colle:** Excuse me, under the rules of order, don't we get equal time? If it was three minutes, it should be one minute each.

**The Acting Chair:** No. I said there were three minutes and they took the three minutes, so we will go to the next presentation.

**Mr Colle:** That's not proper procedure.

**The Acting Chair:** Just as you took the previous three minutes, Mr Colle. We will go to the next presenter, which is Mayor McCallion.

**Mr Colle:** This is not proper procedure. They got the full time.

**The Acting Chair:** Mayor McCallion, please.

**Mr Colle:** This is incredible. We're walking out. We can't be part of this.

**The Acting Chair:** Mayor McCallion, we're going to take a five-minute break.

*The committee recessed from 1018 to 1022.*

**Mr Kells:** Madam Chair, may I ask that we have unanimous consent to have the opposition members ask a question of the previous delegation from AMO?

**The Acting Chair:** Is there unanimous consent? Yes. Mr Colle, one question.

**Mr Colle:** In BC, there is this movement to introduce charter recognition for municipalities and also to prohibit downloading and put in specific terms of reference. Is AMO in support of those two general initiatives to do those things to give municipalities more autonomy?

**Mr Moyle:** On the issue of downloading, obviously AMO is supportive of ensuring that there isn't further downloading, so the answer is yes. In terms of their charter movement, it is a bit more complicated than it at first appears. The Premier of British Columbia was speaking in Toronto about a month ago and was describing their charter proposal. It is a proposal. It is not in legislation. It is scheduled to be considered by their Legislature I think a year from now, which is why we made a suggestion in our submission that if that proposal in fact becomes reality in British Columbia two or three years from now, if there is a five-year mandatory review of the Ontario act it would be a good opportunity to determine whether that experiment worked. If it did, certainly it is something that AMO would embrace as a concept and would recommend it be considered as part of the five-year review.

**Mr Colle:** But at this time, you have no position on it.

**The Acting Chair:** You've had your question, Mr Colle.

**Mr Prue:** I'm going to preface my question, since I have three minutes—

**The Acting Chair:** I did not say you had three minutes. I said you have one question.

**Mr Prue:** OK, but I would like to preface just with a congratulatory note to AMO. You've touched on points that others, at least in the deputations we've had to date, have not talked about, and that's the review in five years of the licensing criteria, the special power extension,

some unique problems related to Toronto in setting up its electoral system that are unique to the province. I congratulate you on that.

My question is specific to the memorandum of understanding. It is the position of my party not to agree with this Municipal Act until we are satisfied that the memorandum of understanding is written in such a way as to guarantee, if not charter status, at least something very strong so that the municipalities will not be bullied by the province in the future. Are you now, or will you be in the next few weeks, signing that memorandum of understanding, and what does it contain?

**Mr Moyle:** We've had some very preliminary discussions with staff at the Ministry of Municipal Affairs as to what would go into a memorandum of understanding. The main principles we want in the MOU are the requirement for the province to provide prior consultation and notice of any decisions that the province may be contemplating that would impact a municipality's budgets, governance or essentially the way it does its business. That's a clear position that has been set out in terms of what we would like to see in the memorandum of understanding. We are working with municipal affairs staff at this point and advancing some of those ideas, but we haven't got an MOU signed yet. We obviously haven't brought it back to our board of directors for consideration either.

**The Acting Chair:** Thank you very much for your presentation, and thank you for your patience too.

**Mr Moyle:** A pleasure. Thank you.

#### CITY OF MISSISSAUGA

**The Acting Chair:** Mayor McCallion, you have 20 minutes.

**Mrs Hazel McCallion:** Thank you. I don't think I'll take the whole 20 minutes. Members of the committee, I appreciate the opportunity to speak to you this morning. I was involved in the consultation that took place on the new Municipal Act. I think it's great progress that we have one. I call Chris Hodgson the Baldwin of 2001; in fact, after the presentation he took me out and said he wanted a picture with me under the Baldwin thing out in the lobby. It takes a long time for the provincial government to move on something. When I think of all the years—in fact, I've been in politics now for 34 years, and I've said I thought I would possibly retire before a new Municipal Act came into being, so I'm just delighted that it has. We've been promised one for many years. I was president of AMO in 1979 and we took up that responsibility, so it has been a long time. All parties are guilty of not bringing forward the Municipal Act; they all had an opportunity to do it and didn't. So I do appreciate what Chris Hodgson has done in bringing forward the act. He moved very quickly when he became Minister of Municipal Affairs.

Yes, it is not perfect and it is not all we would like to see in the act. I want to say to you that I fully endorse AMO's position this morning, the total position. There

have to be changes to the act, and I hope you will take that into account. One of the main changes is that it's got to be reviewed in five years. It is too major an act which affects the economic success of this province.

Quite honestly, I don't care how successful you folks think you are at Queen's Park; the municipalities are your success. The economic development taking place this year in Mississauga of \$2 billion is not because of the province. It's because we turned cartwheels to make it happen in Mississauga. I want you to know that the municipalities are your success, and in order for them to do their job—yes, you still consider us children of the province, but I'll tell you, the children have grown up and we no longer should be classified.

Now, there are some children who need to be disciplined. I sometimes get very annoyed at the province when they bring something in, but then I read the greater Toronto newspaper, the Toronto Star, and I understand fully why some of this legislation has to come in. I know that not all municipalities are well managed and handle their finances in a very businesslike way. Unfortunately, this legislation that comes in to affect those that don't do that certainly affects those municipalities that are operating successfully and financially successfully, but I understand why you do it.

1030

I'm concerned about the regulations. The minister has promised—and I know his promise will be fulfilled, or it better be—that we will be involved in the regulations. I can give you many acts where the legislation has passed—let's take the electricity act, Bill 35. The legislation said one thing, but the interference in the implementation of the restructuring of electricity in the province of Ontario has been enormous and very frustrating. Really, on many occasions we didn't know where we were going as municipalities even though we followed the act. We don't want that to happen.

The five-year review is absolutely essential. That's got to be in the act; otherwise we'll never get another government, no matter which party it is, to sit down and do the necessary work, because the act is not perfect.

I also want to tell you that I was disappointed in the private sector's involvement in the discussions. About setting licensing fees, I asked the bankers' association if they would allow the government to determine their fees. I said, "The government sold 407. I understand the cost of travelling on the 407 has gone up twice. Is there any control on that?" Yet the private sector is very concerned about the licensing fees that we will pass in a municipality.

When I read the newspaper every morning and pick up the Globe and Mail and the National, I'm not sure the private sector is operating any more efficiently than government when you see the layoffs and the mismanagement that occurs in the private sector. I don't think the private sector can really, as far as it applies to Mississauga, come in and tell us how we should improve our operation. Yes, we can improve it, as we do every year. But I was disappointed in the presentations: the lack of

confidence from the private sector in local government when it has been the best-managed government in Canada, with the lowest taxes of any government. I find that hard, having been in the private sector for 30 years before I became a member of the public sector.

Another thing: we want the government to take us out of Bill 46. I know why you brought in Bill 46. You brought it in because many of the special-purpose bodies spend a lot of money, like hospital boards. But they're not elected; they never go before the people. They're appointed. Why would you mix us up with appointed boards? We are elected. In fact, we go to the public more often than you folks do. You dictate when we go: every three years. We have no choice. We have to stand on a public platform and defend what we have passed during three years. It's hard for people to forget what we've done in three years, but you folks have four and five years. That's fine; I appreciate that. But I don't feel that municipalities should be tossed in with hospital boards and all the other special-purpose bodies. We're elected. Come on. Democracy must be working. Therefore, I pleaded at AMO with the government to get us out of Bill 46. There's no need of you being in with this new Municipal Act either. That's a must, I have to tell you. I've spoken to the minister on it.

It's very important that this act be carefully reviewed over the next five years as well, and monitored, which AMO will do, I can assure you, and I will work with AMO.

I take real exception to the fact that the province tells me the type of tax bill I send out and how it should be structured. You have done it, but I can tell you, you'll never control what I put in the tax bill. That will be the message that'll go to the people, because if I feel strongly that the province—

I also take exception to the interference into the taxation in the municipality. We don't come down and tell you that you should give a provincial sales tax elimination to this group of people and that group of people and that organization. We don't do that. But you tell us that we have to give a tax break to this organization, to this group of people etc. I thought the old Municipal Act was quite sufficient in dealing with tax reductions in the municipality. But now there are so many items where you're telling us, "You've got to give a tax break." Do you realize that that interferes with our budget and with our revenue? Then, with your downloading, of course, that means you've added again.

As AMO says, in regard to our taxation and assessment, we are in a terrible mess. Let me give you an example. You capped the industrial-commercial, right? It cost the region of Peel \$4.4 million. We don't need capping of the industry and commerce in Peel. We have a good relationship between industrial-commercial and residential. By doing that, we would have had to transfer \$4.4 million to the residential taxpayers, who are paying their way in the region of Peel. They're not paying their way in Toronto. I realize that the reason the government did it is to bail out the situation in Toronto. But it applies

to us, who don't need it, and it may have to apply to other areas. What do we do with \$4.4 million? Tell the residents, "The province just capped the industrial-commercial. Now we have to pick up \$4.4 million, so we'll just transfer it to the residential," when our residential are paying their way?

The act is great. We're excited that we now have a new Municipal Act. It is not exactly what we wanted. We've made that clear, and AMO made it very clear this morning. I think you can improve it before it goes through the Legislature. There are some basic things that AMO has recommended today that I think the government should act on. It means it would be a much better situation. Please get it through quickly. We need it. Municipalities in the province are hamstrung right now. Things have changed in the 100-and-some years since the Baldwin Act, but the act does not recognize how municipalities have grown up and become the economic engines of the province. We are the economic engines.

I told the Prime Minister of Canada, "You can go on Team Canada all you want across the world and try to encourage investors to come to this country, but if an investor comes to this country and sees that our infrastructure is not up to date, sees they can't move their goods and move their people, you can travel all you want." It's the municipalities that must provide the infrastructure to provide the necessary services to attract the investor to this country. We must be given the tools to do it, as well as the funding.

What we need in this country is a sustainable source of revenue for municipalities. We can no longer continue our responsibilities on the property tax. It's outdated. It's not possible. And we don't need handouts. The federal and provincial governments are great. They're smart, quite honestly. They say, "We'll give you grants." It depends which party is in power at Queen's Park or Ottawa that determines the grants. Then try to get the money to flow. And who's going to get the grants? Is it going to be political decisions etc? What the municipalities of this country need—and I would like to see Ontario take the lead in providing a sustainable source of funding for the responsibilities we have accepted and implement, not the property tax. Social services and education should be off of it. Then we can get on with providing transit and some of the things that are very essential to the economic health of our municipalities.

If the municipalities are healthy, folks, the province is healthy. If the municipalities are not healthy, then I don't care what you do at Queen's Park, it is not going to make the province healthy.

1040

I plead with you to get on with the act and get it in. Make the changes that AMO is requesting. They're identical to what we want as a municipality, as the city of Mississauga. It is very essential that this act be reviewed in five years to see how it is performing. Make the necessary changes through consultation, definitely. But let's also be involved in the regulations. I've been disappointed when legislation has been passed—by all the govern-

ments—and then we get the regulations and wonder if we were at the same consultative process. I ask you to give AMO that opportunity as well. I know the minister has assured us of that and I hope it takes place. But let's get on with it. Let's get on with a new act. Let's look at things differently. Let's look at the success of this province.

I want to emphasize again that I don't care how many laws you pass at Queen's Park and what great things you do; the success of the province of Ontario is completely dependent on how the municipalities operate in this province. We're right there. We need the infrastructure.

This garbage disposal issue, that 300 to 400 trucks are going to go across the highways to take Toronto's garbage to Michigan: have you ever thought about how many loads of material, products, that manufacturers want to get across that border while they wait for the 300 to 400 trucks to get across the border with garbage? Isn't that interesting. We should have Ontario garbage disposal. I don't like dumping our garbage on another country. We should be dumping it in Ontario. You see the situation we have? Peel's garbage has to go to Michigan as well, because we don't have a landfill site. It'll be completed shortly. Folks, think of the economic impact of all that garbage going. Don't underestimate that the United States will close its border, and then you will have to deal with it and what will it be? Another moraine issue or another garbage disposal issue, a crisis situation that the province will be dragged into to solve.

I plead with you, give us the flexibility to do our job. We're able; the city of Mississauga has proved it. I can't speak for other municipalities. We are debt-free. We have \$650 million in reserves. We run the city like a business. We've just been declared one of the best 100 employers in Canada. We've been declared twice now as the most crime-free city in Canada. Look at some success stories and then determine your legislation accordingly.

**The Chair:** Thank you very much, Your Worship.

We have about two and a half minutes. While you didn't appear to agree with the policy, it is the committee's policy for it all to go to one party when it is less than three minutes. Mr Colle, it is your turn.

**Mr Colle:** Thank you very much for the very helpful input and your references to past bills. You hit the nail on the head when you talked about the lack of flexibility. Nowhere else is it more apparent that municipalities don't have the flexibility than when I look at page 221 of this bill, where it says that "a municipality shall not vary the form" of the tax bill "unless the variation is expressly authorized by the Minister of Finance." So you issue a tax bill, and what you put in a tax bill as a municipality cannot be—as the act says, other information is prohibited and variance is prohibited unless authorized by the Minister of Finance. I don't know how AMO could not object to this. I don't know how the government could continue to say it is going to give municipalities some kind of autonomy when it even tells you what you can and cannot put on the tax bill you send your citizens.

**Mrs McCallion:** I just said that I object to that strongly.

**Mr Colle:** I'm glad you mentioned that. The critical thing here, as you said, is that the municipalities are really the engines of the province. Perhaps by giving you more autonomy, you can make your city stronger and the province stronger. I hope that some of the amendments proposed by AMO can be included. I hope that this section especially is removed from the bill to show good faith that municipalities are mature successes that we should be encouraging rather than constraining in what they can even put in a tax bill. I applaud the mayor for her continued efforts to stand up for what are success stories, that is, our local municipalities. Mississauga is a stellar example of what good municipalities can do for their people and for the province. On behalf of all of us here—I'm sure my colleagues will agree—we want to say we are thankful for the great work that cities like Mississauga have done in making this a better province. May you get the continued power to do that.

**The Chair:** Thank you, Your Worship. I probably should've allowed Councillor Moscoe time to respond to some of your latter comments, but I'll let you sort that out back in a different forum.

ASSOCIATION OF MUNICIPAL  
MANAGERS, CLERKS  
AND TREASURERS OF ONTARIO

**The Chair:** Our next presentation will be from the Association of Municipal Managers, Clerks and Treasurers of Ontario. Good morning. Welcome to the committee. If you'd be kind enough to introduce yourselves to Hansard at the outset of your speech.

**Mr David Calder:** Thank you, Mr Chairman and members of the committee. My name is David Calder. I am the director of public access and council services for the city of Cambridge. I am president of the Association of Municipal Managers, Clerks and Treasurers of Ontario, otherwise known as the AMCTO.

The replacement of the current Municipal Act is welcomed by the AMCTO. I think there is a consensus that the current act is outdated, overly prescriptive and generally inadequate in dealing with the complexities of managing and operating a modern municipality. We're here because we are the members who will be responsible for ensuring the effective implementation of this new legislation. We want to work with the government to ensure that whatever becomes law is workable and provides municipalities with as much stability as possible. With me today are John Craig, city clerk of the city of Barrie and a director of AMCTO, and Ken Cousineau, AMCTO's executive director.

As you may know, the AMCTO is the largest voluntary professional association for municipal government managers in Canada. Today our members are represented in approximately 97% of Ontario municipalities. Therefore, we believe we have a duty to flag any concerns or issues that could be problematic from an administrative

point of view once Bill 111 is proclaimed and applied across Ontario. Our approach has always been to focus on more technical or administrative matters and leave the broader policy issues to others. Our detailed concerns and recommendations regarding 111 can be found in our written submission.

Our presentation today will focus on five key issues. You may notice that the first two of these issues unfortunately are not new. We raised them previously in our response to the 1998 draft legislation. Today's issues for AMCTO are (1) permissive authorities, (2) regulatory authority, (3) the subdelegation of administrative authority, (4) notice provisions, and (5) definitions.

Generally, the AMCTO is disappointed that two of our most significant concerns with the 1998 edition of the proposed legislation persist in Bill 111. In the main, these concerns relate to how the bill grants natural person powers, then proceeds to restrict the exercise of those powers. In our 1998 submission we wrote, "If increased flexibility, a businesslike approach to administration and natural person powers are to be meaningful, the government must avoid imposing restrictions on municipalities that detract from or conflict with flexibility, businesslike conduct and the exercise of natural person powers. The AMCTO is concerned that the government on one hand is granting natural person powers and, on the other hand, is unduly and seriously circumscribing the exercise of those powers and thus retaining power and responsibility itself."

1050

This leads us to our first issue, permissive authorities. With municipalities having natural person powers, we question the need for the long list of permissive statutory authorities included in the bill. In fact, the existence of such provisions begs the question, why explicitly permit this and not that? Such provisions could lead to a judicial interpretation that says that which is not explicitly permitted may be denied, that is, ultra vires of the powers of the municipality. As natural persons, municipalities do not require permissive provisions with respect to agreements, highways, utilities commissions or any other component of the bill that falls within the scope of the 10 spheres of municipal jurisdiction.

The necessary exception would be provisions to empower municipalities to exercise governmental powers, such as the ability to levy taxes. These sections should, however, be general in nature and simply provide the authority. Any restrictions should be specific and limited to vital provincial interests. Furthermore, restrictions should be incorporated in the new Municipal Act itself and not in regulations. In summary, we propose that permissive authorities be removed from the bill except as they are necessary to permit municipalities to exercise governmental powers.

Our second item, regulatory authority: the AMCTO is concerned with the breadth and scope of the proposed regulation-making powers contained in the bill. Our preference is to see many of the regulatory provisions eliminated, but we understand this is not the direction in

which the government is heading. So the AMCTO respectfully requests that the bill be amended to require that reasonable consultations occur prior to regulations being filed, or, at a minimum, that notice of at least 30 days be provided to municipalities prior to the issuance of any regulations. In addition, to allow for proper transition between the current act and Bill 111, it is imperative that regulations be filed by March 31, 2002.

Item 3, subdelegation of administrative authority: throughout the proposed legislation, there are provisions pertaining to the subdelegation of administrative authority to undertake various municipal activities. In some areas, the legislation is very specific, while other sections of the bill refer to the ability to subdelegate in very broad terms. We are concerned that the more prescriptive clauses unduly limit a municipality's ability to subdelegate activities in a manner that is best suited to municipal operations. A less prescriptive approach would be more consistent with the principle of natural person powers. We suggest that the more prescriptive subdelegation provisions found throughout the bill be removed and replaced with a general clause indicating that where a municipality has the authority to subdelegate administrative responsibilities, these responsibilities can be subdelegated in the manner which best suits the municipal operations.

Item 4, notice provisions: in various sections of the bill, when requiring municipalities to give notice, the responsibility for giving notice rests alternatively with council, as noted in subsection 173(3), the municipality, subsection 238(4), or the section may simply state that notice must be given, subsection 210(1). As we stated previously regarding the subdelegation of administrative authority, the AMCTO is concerned that legislative prescription to this level of detail could lead to problems should a municipality inadvertently fail to adhere to the letter of the law. The AMCTO recommends that the bill's provisions regarding notice be limited to identifying those areas where the provincial government has reasonable justification for wanting to ensure that municipalities provide notice. The municipality, through its council, should be able to subdelegate both the timing and nature of notices to the clerk. The clerk should be able to subdelegate further if it is reasonable and administratively efficient to do so.

A common theme throughout the four points just discussed is the bill's propensity to overprescribe. Overprescription, in our view, is a flaw in the current Municipal Act and is inconsistent with the natural person formulation. It will continue to confuse accountability and responsibility between municipal and provincial governments and could also lead to interpretative problems and hamper efficient municipal operations.

Our last issue, number 5, definitions: our final point relates to the definitions contained in the bill. While several definitions are incorporated into part I of the bill, we have noted that definitions are evident throughout the entire bill. In fact, the same term may be defined differently in different sections. We believe that this will be a

source of considerable confusion. The AMCTO recommends that the government refrain from sprinkling definitions throughout the legislation. Definitions should be consolidated in part I of the bill and be applied consistently throughout. If a definition modification is required, then a new term should be used and defined in part I.

The AMCTO also believes that definitions, by their nature, should be definitive and should leave as little as possible to interpretation. Currently, this is not the case. For example, in section 1 of the act, the term "system" is defined as "one or more programs or facilities (including real and personal property) of a person used to provide service and things"—my emphasis on "things"—"to the person or to any other person and includes administration related to the programs, facilities, services and things"—again, my emphasis on "things." We recommend that all definitions should be reviewed and be subject to a reasonable person test. What would a reasonable person, without bias or prejudice, read from any given definition?

We have addressed today five key issues our members have raised. Other specific issues are contained in our submission. Notwithstanding the issues and concerns raised today and in our submission, we and our members want to see Bill 111 receive royal assent. We want to have a new Municipal Act implemented in 2003. We have already waited too long to replace the current antiquated legislation. We will continue to work with the government to ensure that the legislation and subsequent regulations work. We look forward to continued participation as a stakeholder group in the development of the subsequent regulations.

On behalf of AMCTO, this concludes our oral submission. I thank the government very much for the opportunity to present to the committee the views of the AMCTO. My colleagues and I are willing to take any questions.

**The Chair:** Thank you very much. That affords us about seven minutes for questions. We will divide it equally among the parties. We'll start with Mr Prue.

**Mr Prue:** Does that mean I have two minutes? I want to be clear, because we—

**The Chair:** Two minutes and about 15 seconds.

**Mr Prue:** All right, then I guess I have a comment and then a question.

The comment is that I commend you. This is very good. We are seeing this from a very different perspective, particularly around the natural person powers. You are right; it is overly prescriptive.

My question comes to the definitions. There are many definitions left out of the bill. One that I noticed and flagged was that of "consumer." Although it is used several times within the bill, there's no definition of what a consumer is.

You've shown us here one of the worst gobbledegook definitions I have ever seen. Can you explain to me what you think this means? I'm having a real problem in my own head understanding what a "system" is now. Can

you explain to me what you think this is? If you can't, I'm going to ask the lawyers later what they think this is.

**Mr Calder:** Our point is that obviously there is some difficulty in the interpretation based on wording used, and we're recommending that clarification be given regarding that terminology, particularly what is a "thing"? Is that something that has to be defined further, or is it having some legal term that we're not aware of? These are the issues we're raising in terms of the definitions. We feel that a review of all the definitions should be undertaken, and then put them all in one place so it is clear.

**Mr Kells:** I do find this a very fine presentation; it is laid out well. I have just one comment in relation to the drafting of the regulations. It would seem, given the type of work you people do, that you're as close to a municipality as anybody can get and your relations with AMO would be as strong, I would think, as anybody's. I would hope, as we are pledged to consult with AMO on every step of the way in the regulations, would that not be a satisfactory way to have your opinions felt as we continue to deal with AMO and draft the regulations?

1100

**Mr Calder:** I believe it would be. It is a relationship that has developed through this process between AMO and AMCTO that we have been able to provide some technical advice, and we would continue to do that. A rapport has also developed with ministry staff in terms of assisting in regulations and what might be coming, again from a technical aspect. I would hope that would continue, and we would certainly be willing to participate in that way.

**Mr Kells:** Just a comment. You have a concern about it's being overprescriptive, and then you have a concern about its not defining things well enough. Possibly your points are well taken both ways, but in drafting any kind of legislation it is pretty difficult in the first go-round. Even though we've been at it for about five years now, to pin this down—it's the first time I've heard the concern about definitions. I kind of like the idea of having them spelled out. I don't know whether that is overprescriptive or not, but it's something the ministry should take a look at. I appreciate the thought in that regard. Possibly you have your own ideas on what some of those definitions may be, and we're not averse to receiving anything from you in that regard.

**Mr Colle:** I want to congratulate the Association of Municipal Managers, Clerks and Treasurers of Ontario. In the past, you've been very helpful in pointing out some of the consequences of some of the rushed legislation this government has put forward. That's why I encourage everybody to pay attention to the proposals you've put forward, because you were certainly right in the past about the messes created with tax assessments and so forth with municipalities. The things you've mentioned are quite significant and I hope we can urge the government to accept some of these concrete suggestions.

One of the things goes to the tax statement, the tax bill. You are the people on the front lines who have to put together the tax notice, the tax bills. You get all the phone calls. What do you think about the clause in this bill which overrules anything you do in what you can put in the municipal bill? The Minister of Finance can tell you what to put in and what to exclude. Do you have problems with that? Would you like to see that removed?

**Mr Calder:** I'll defer that question to Mr Cousineau, who has input from a variety of our members.

**Mr Ken Cousineau:** We have taken exception to that clause in past presentations both to the Minister of Finance and to the Minister of Municipal Affairs with respect to Bill 140 and previous pieces of legislation and regulation, in fact in a presentation we made to the government prior to Bill 140 being introduced. In all those cases, we took exception to that clause. We do today. But those concerns and our suggestions are outlined in a number of previous briefs and we didn't feel the need to reiterate that today.

**The Chair:** Thank you very much for coming before us here this morning. We appreciate your comments.

#### CITY OF TORONTO

**The Chair:** Our next presentation will be from the city of Toronto. Good morning. Welcome to the committee.

**Mr David Miller:** Thank you very much, Mr Chair and members of the committee. The city of Toronto appreciates the opportunity to give our position today. My name is David Miller. I'm the city councillor for High Park and I'm a member of the council reference group dealing with city charter issues. I'm here today on behalf of the mayor. My duty is to present to you Toronto city council's response to Bill 111. I'm accompanied by Jim Anderson, who is our director of municipal law.

I'd like to preface my remarks by reminding members of the committee of a few facts about the city of Toronto. These are important to state, though, so you understand why our context in dealing with the proposed changes to the Municipal Act may be somewhat different than other municipalities.

First of all, the city is the heart of an urban region that has almost five million people. That region is growing. Some estimates suggest the GTA, over the next 20 years, will grow to seven million people. The city of Toronto itself has half of the population of the GTA, about two and a half million people. It is the fifth-largest municipality in North America by governed population, after Mexico City, New York City, Los Angeles and Chicago.

In Canada, only the federal government, yourselves, the province of Quebec, the province of British Columbia and the province of Alberta govern more people than the city of Toronto.

Our spending responsibilities, at approximately \$6 billion, are 20% more than the combined budgets of Vancouver, Calgary, Regina, Winnipeg, Halifax and the recently amalgamated city of Ottawa. Add them all up

and ours is 20% more. Of course we know that cities, particularly in the current global economic system, are tremendously important. In Canada, that is equally true. In Toronto, about 44% of Ontario's GDP is found in the Toronto census metropolitan area, Vancouver about 53% of British Columbia's, Montreal about half of Quebec's, Winnipeg's about two thirds of Manitoba's, and Calgary and Edmonton together about 64% of Alberta's.

From Toronto's perspective, Canada's cities are the wealth of the nation. Cities have to play a significant role, and I think provinces have recognized that in the past few years by increasing the responsibilities that cities have to undertake. In our case, these responsibilities have included a greater share in the funding and delivery of social assistance, full responsibility for social housing programs and, until the recent partial restoration of provincial funding, full funding responsibility for transportation and transit.

Cities are critical to Canada and Toronto is critical to Ontario. That is where most people live, work and play; 80% of Canada's population is in cities. Unfortunately, cities lack the tools and authority to deal properly with the critical issues that face us, issues like poverty, housing, air quality, traffic congestion and crime. We face 21st-century challenges but we're still governed by a 19th-century model that makes cities almost completely dependent on provinces.

That's why in July of last year, Toronto city council adopted the position that the province could prepare Toronto to compete successfully in the 21st century by enacting a custom-built charter to meet the city's unique responsibilities and needs. Council agreed that a charter for Toronto is achievable within the existing constitutional framework and would do the following: it would give Toronto powers and responsibilities that match our needs; it would spell out clearly the city's spheres of power with respect to local matters and give the city the ability to act independently within these spheres; it would recognize that the city needs a new tool kit to ensure that financial resources match our responsibilities; it would provide the authority to conduct and attract business in innovative and more efficient ways; it would recognize Toronto as an order of government that should be consulted whenever provincial financing and policy changes are being developed that impact the city; and it would enable the city to communicate directly with the federal government on matters of mutual interest, such as urban infrastructure, housing construction incentives, immigrant settlement and the development of a national agenda on urban issues.

As you know, Toronto is not alone in making these points. Cities across the country are speaking out through the C-5 initiative, through the campaign to unleash the potential of Canada's cities, and through the Federation of Canadian Municipalities' big cities mayors' caucus. For us, that is the background in which we must analyze the proposed amendments to the Municipal Act.

There is some language in the Municipal Act that shows some signs of promise. The new act indicates that

the Ontario government is responsive to the language and concepts of municipal empowerment that have been in use in other provinces and territories for a number of years. This language includes the recognition of municipal government as a responsible and accountable order of government, natural person powers, broad spheres of municipal jurisdiction, and a willingness to consult with municipal government. That's the good news.

Unfortunately, from our perspective the act falls far short of what is needed for a modern city. What remains at issue is the extent to which the Municipal Act gives effect to the principles or objectives associated with these concepts, such as natural person powers. The legislation does not go far enough in addressing limitations on municipal power and inadequacy of resources to fulfill our responsibilities, limitations on municipal authority to raise funds locally, and the problem of too much political involvement in telling municipalities what they can and cannot do and second-guessing our decisions.

#### 1110

We have looked forward to the new Municipal Act because we'd all been waiting for a major overhaul of the Municipal Act for decades. We were told by you that the legislation would be more flexible, less prescriptive, more comprehensive and understandable. Unfortunately, from our perspective the legislation falls short of that mark. It trades one set of prescriptive requirements for another. While providing natural person powers and spheres of jurisdiction, the legislation limits the extent of such powers and entrenches a significant level of regulatory power over municipal government—including our city, which has twice the population of Manitoba.

There's a real question mark over how much assistance the new powers will offer when combined with the legislative limits, including any regulations. The legislation defines spheres of jurisdiction but leaves out basic municipal responsibilities like land use planning, community and social services, and even housing, which has so recently been devolved. Affordable housing is in critically short supply in Toronto. The legislation does absolutely nothing to empower us to protect the affordable rental housing that we have now.

Really, the heart of the problem is that the bill takes a "one size fits all" approach. It appears to have been drafted for the smallest, least sophisticated municipalities in the province. It relies on regulations to define and limit municipal powers rather than enshrining municipal powers in the legislation. For example, section 17 specifically prohibits a municipality from incorporating a corporation, while section 203 allows the minister to make regulations allowing municipalities to create prescribed corporations, putting the control completely with the province. It also continues to prescribe such minutiae as the contents of a procurement bylaw. Surely that kind of micromanagement is not necessary with a city like Toronto, whose population exceeds that of all the Atlantic provinces put together.

The bill does not distinguish between the different needs, challenges and capacity of a small rural com-

munity and those of a city of two and a half million people at the heart of an urban region of five million people.

We've been told that we must rely on as yet unseen regulations to add flexibility to municipal debt and investment instruments. Bill 111 itself does not deal with cities' need for access to appropriate and sustainable sources of revenue.

Toronto needs a legislative framework that can facilitate a new relationship between the city and the provincial and the federal governments. We need a relationship that is more appropriate to the role and responsibilities of cities in the 21st century. Toronto city council continues to believe that an appropriate legislative framework for city government in Toronto can be provided through the enactment of a concise, modern charter for Toronto. Similarly, charters can be enacted to empower other Ontario cities to meet their unique needs and growing responsibilities—for example, Ottawa, which has recently been amalgamated. At the very least, a more generic alternative to unique city charters would be the enactment of an Ontario Cities Act which addresses the needs and capacity of Ontario's cities. Unique city charters or a Cities Act would remove Ontario's cities from the more general Municipal Act, which continues to be geared toward the needs and capabilities of Ontario's smallest municipalities.

Cities like Toronto need broad authority to cope with the results of social, economic, environmental and political forces, results which happen in cities, results which are concentrated and highly visible in cities. Cities like Toronto need broad authority and a modern legislative and financial tool kit to compete successfully in the 21st century.

Bill 111 is a beginning, but it is still wide of the mark. However, at the city of Toronto we believe that the change we're requesting is inevitable. The mayor and city council intend to continue to pursue a city charter solution through dialogue with the provincial government.

I look forward to your questions.

**The Chair:** Thank you very much. That affords us about nine minutes, so three minutes per caucus. This time we'll start with the government.

**Mr Kells:** I might say, Mr Miller, I really appreciate this presentation. It's obvious that we've got the Toronto picture. You're delivering it, and it's well received in many ways.

I just have a couple of thoughts. As you know, we will be dealing with AMO in some detail on the regs. I'm wondering, do you not feel, as powerful as the city of Toronto obviously is, which you've described very well in your presentation, that you have enough clout to deal with AMO and make your opinions felt at that level at the time we're negotiating or dealing with AMO about the regs?

**Mr Miller:** AMO needs to represent the interests of all the municipalities of Ontario, and on issues like this there is quite a divergence between the needs of Toronto

and Ottawa and perhaps Hamilton than there would be in many other municipalities. Of course, we are very involved in AMO; Councillor Moscoe is vice-president, I think—something. There are some detailed issues in which our position would be consistent with that of AMO. But it's a very strongly held belief of the city of Toronto, and I think we were unanimous on the vote on this at council, that the large cities need to be dealt with differently. The particular problem with this act is that what it purports to give on one hand, by talking about spheres of jurisdiction and natural person powers, which is language we like, it really takes away in other provisions of the act. If the government feels it is unable to change that because it feels the smaller municipalities need the oversight of the province, we're inviting you to work with us to find a way to accommodate the needs of the larger cities.

**Mr Kells:** You've touched a nerve with me, obviously, because I'm a Toronto member. One of my comments, and I don't mean to get provocative in any way, is that we have 100 Liberal MPs in this province and all the MPs in Toronto are Liberal. I had hoped that our city might have done better with the federal government in funding programs or any kind of initiatives. I don't have to tell you that in the United States the cities blossom under the direct grants they get from the federal government on an almost yearly basis, particularly in the appropriations bill.

Yes, we would like to work with the city. I felt again, as a city member, that we've had a major problem, and I think we have to take a big share of that's being a problem. But I can speak for the minister in the sense that he is more than willing to deal with the city on a basis that would probably help solve the problem, whether it be assessment, which we currently have Marcel Beaubien working on, and I can tell you that the Toronto problem, if I may use that term, is a major part of those deliberations.

Yes, we would like to deal with you in a more daily, intimate way. I could talk about the charter somewhat, but your thoughts about a unique city approach are probably a very meritorious suggestion. I'd like, perhaps later on, to see that in more detail, fleshed out a bit. But it's a good idea, and I don't think I've seen it before. Have you, outside of seeing it in here?

**Mr Miller:** The city of Toronto had the City of Toronto Act in the past, so there are past precedents to build upon. And there is some interesting work being done in British Columbia at the moment with municipalities in general.

Thank you for your remarks. They give us some slight cause for optimism. One of our problems in dealing with the federal government, of course, is that we're a creature of the province. I chair our immigration and refugee working group. Toronto is the biggest single receptor of immigrants in the country, yet we can't speak to the federal government directly. I think, from anyone's perspective, that's silly. We want the province to help us by giving us the legislative tools so we can actually

phone them up and say, "What are you doing? Please fix it."

**Mr Kells:** We can speak directly and it doesn't do much good, quite often. Anyway, I appreciate your thoughts.

**The Chair:** In the absence of the Liberals, I'm allowing a splitting of the time, so you've got about four and a half minutes.

**Mr Prue:** Charter status of course is not new to me, because I was one of the people who voted for it.

The question I have is that AMO is asking for very quick passage of this bill. The New Democratic Party position is that we are not interested in quick passage until such time as a memorandum of understanding has been signed off on by AMO on behalf of all the municipalities. Does Toronto agree with the signing of the memorandum of understanding, seeing that it does not go anywhere near treating Toronto any differently than—and I'll just pick a town—Bancroft, population 800?

1120

**Mr Miller:** Toronto's position is that cities have to be treated differently than the Bancrofts of Ontario and the legislation has to recognize that. We do think it is important that the Municipal Act changes are coming forward, and we're glad that the concept of natural person powers in spheres of jurisdiction has entered into the legislation. But left the way it is, Toronto would see no need for quick passage because it doesn't resolve our problems. We would hope that perhaps, based on the comments of Mr Kells, there may be some attention given to dealing with the cities separately in the legislation in some way that supports the points we've set out.

**Mr Prue:** This causes a bit of a dilemma. What do we do? Do we leave the old act, or do we go with the new act, which is obviously not to the liking of the 2.5 million citizens of the city of Toronto? If we do pass the act, do we do it contingent upon there being a Cities Act? What's your position?

**Mr Miller:** Toronto would like to see some meaningful commitment, perhaps the tabling of draft legislation or something that shows that our concerns are going to be addressed. As you know, being a former mayor, Mr Prue, the most arcane things can be directed by Queen's Park. It becomes a bit of mockery, in the current context, when you spend months working on something only to have it changed by an obscure regulation change at Queen's Park that nobody knew about. Our desire is to ensure that Toronto and the other cities in a similar position—Ottawa for sure—are dealt with separately now. We're worried that if the legislation gets pushed through quickly, there will be no more impetus for change and we will have lost the opportunity to achieve the tools we need.

**Mr Prue:** There is one glaring, huge example where Toronto is being treated differently in this act than any of the other 446 municipalities. Toronto is the only municipality under this act that does not have the right to choose its own internal ward structure. Everybody else does. Toronto is being treated differently, but in a way

that you possibly never could have imagined. What's the city of Toronto's position on that?

**Mr Miller:** No position came to council, but I can tell you two things. I was on the ward boundary committee, as you know, Mayor Prue—

**Mr Prue:** Mayor? See, I still get called that every day. Go ahead.

**Mr Miller:** It is an example, though, that shows it is quite possible for Toronto to be treated differently. There's an implicit recognition in that section that Toronto is a very different place from any other municipality in Ontario. We all know it is. Really what we are saying is, set us free. In the US they don't call it charter status; they call it home rule. I think that's very good language because it's non-partisan language. All parties can buy into home rule. The recognition of Toronto, in that one section, as being different shows it is possible to do it in a more meaningful, positive and substantive way.

**The Chair:** Thank you for your presentation before us this morning.

#### JACK LAYTON

**The Chair:** Our next presenter will be Mr Jack Layton. Good morning. Welcome to the committee.

**Mr Jack Layton:** Good morning. Thank you for the opportunity, committee members. I may help you catch up with your time slot, because you've heard from a great many very well qualified speakers already this morning, and much of what I might have had to add as an individual member of council and somebody studying and teaching urban government for 30 years—that's why I signed up to come, just because I am very interested in these topics. In particular I wanted to share just a few thoughts about the context we're operating in and the changing relationships between municipal governments and other orders of government around the world, in particular in the United States and across Canada.

I'm delighted to see a new Municipal Act coming forward. There are lots of things in it that could be better, but it's terrific to see an initiative to try to address the anachronism of a 150-year-old piece of legislation. Certainly across the country there's been a lot of encouragement for provinces and municipalities to learn from the best practices taking place in different provinces, and there's actually a lot of change going on right now, as I'm sure you know. Right across the country there's a kind of awareness that maybe we really are now an urban society rather than the rural society we were so many years ago, and we need to provide our local democracies with the tool kit, referred to earlier, to allow them to compete and succeed.

I'm going to leave you with a copy of a study which is on the Web, so I've just got the one paper copy to leave with the committee, but feel free to check it out. It is a document produced by the Federation of Canadian Municipalities, and it asks a very interesting question, which is, can Canadian cities compete? I'm not, by the way, representing FCM here today, although I hold a position

there. FCM leaves enthusiastically the position on these matters to its sister organization, AMO, but we have produced a document that you might find interesting.

We're trying to compete with the major cities of the US. If you ask a major business location firm in the US today about the cities that businesses should be considering, most of them don't even have a Canadian city on the list any more. They used to, prior to free trade, because it made sense to have a Canadian head office in those days. Now that argument is gone, and most of the major business locators in the US no longer have a Canadian city on their list for consideration. Why? Well, we discovered that it's because the cities in the United States have a toolbox of activities and freedom to work with, whether it be businesses or social issues or quality of life or community investment, which is quite phenomenal.

One thing they have that we don't, and I think we'd pretty much have unanimity around the table on this one, is that they've got a federal government, a national government, that invests in cities. That's something the Federation of Canadian Municipalities is working very hard to change. In fact, the difference is so remarkable that you might want to remember this number. In the US, the federal government puts \$54.55 per capita per year into municipal budgets. The Canadian equivalent is US\$10.22, less than a fifth. Now, it's true that states put less money in, relative to what provinces have traditionally done. I won't go to where we are on that issue these days. But the point is that we're still very much out of balance.

Do you know that municipal budgets for the same package of services, measured apples to apples as best we're able, are two and a half times higher per capita than municipal budgets in Canada? That is a transformation that's happened over the last 25 years, because the American urban crisis of the 1960s and 1970s provoked a complete rethink of the way in which cities were to be handled. The realization was, first, "We have to give them some resources because they only have the property tax and they've got to have some of these growth taxes that we have," because when economic activity increases in a community, their costs go up but their revenues don't. In fact, the state and federal governments were picking up the revenue. They've recalibrated that.

Do you know that in the United States now 30% of the municipal budgets come from federal and state sources and that number is rising? In Canada, it's 18% and falling. In the US, cities rely on property tax for only 21% of their revenue. In Canada, it's 55%. Four years ago, it was 49%. Increasingly, we're relying on this very limited, anachronistic tool of the property taxes, and we're supposed to have our cities be competitive. Well, it's not going to work. It's a little like not feeding your athlete and hoping they'll be able to compete with the athlete who's getting a good diet from their coach.

1130

These relationships have to change on the financial front, but they also have to change on the empowerment

front. This is very interesting. There's one little chart here that shows some of the tools municipalities have in the US that we don't have in Canada. For example, they can introduce tax-exempt municipal bonds, a very important capital financing tool for initiatives in municipalities. We should be looking at these kinds of things. They have the ability to give tax incentives of a wide variety of kinds, subject to fiduciary responsibility and due diligence, but we're now dealing with sophisticated governments able to analyze those risks; it's not like the old days. They're able to make grants. They're able to introduce growth taxes, in other words, taxes that only produce revenue when there's economic growth, like, for example, hotel taxes or tolls. These kinds of strategies are very, very common now. Taxes are never popular, so giving municipalities or municipal governments the power to raise these kinds of funds is awfully easy to object to, but if we continue to do that while our competitors allow their cities to have access to these sorts of resources, we're going to be the ones paying the price at the end of the day.

Where I'm going with this is to suggest that across the country, different provinces are trying step by step—and it's a difficult process—to give up, as it were, control and responsibility, but they're trying to do this in a reasonable fashion. I very much want to support the recommendation here that this act be reviewed in five years. In fact, if I could go a little further, I'd suggest we start the review almost immediately. Actually, this is what they're doing in Alberta, where they've adopted an act which has been in place for a relatively short period of time and they've begun to make some amendments to it. Just yesterday—last week, I should say; I met the minister yesterday—they are creating a council to review and update the whole package almost on an ongoing basis.

This is very similar to what has been done in BC, where quite a departure from history is underway: the concept of the community charter. The Premier came here to a conference we had, you may have noticed, about a month ago—three or four weeks ago I guess it was—to speak about it because he's very enthusiastic about this notion of really starting to treat municipal governments as partners, as collaborators with the other orders of government in solving the problems faced by our people. He said, "We've forgotten about the notion that municipalities are creatures of the province. We don't look at it that way any more." It doesn't make sense to look at it that way any more. What makes sense is to minimize the number of times that somebody has to look over the shoulder of a democratically elected decision-maker and decide whether or not what they're doing is right. Let's free up our various orders of government to do what they can do best.

My message is really just at that sort of general level, that in the US we're seeing great advancements in the creation of home rule and freedom for municipalities and it's really paying off. Their cities are taking off in many ways, and we're struggling. Secondly, across the country we've got some best practices beginning to emerge.

Third, it's good that we have a new Municipal Act coming in Ontario. Fourth, I hope you'll begin to review it almost the very day it's adopted. That wouldn't be some kind of admission of failure or inadequacy; it would be recognizing a process of continuous improvement. We are going to need that continuous improvement to recognize some of the issues raised by my colleague from Toronto, although what I have begun to learn is that these same problems that we thought may have been only in Toronto—I'm not contradicting my friend David Miller, but it's remarkable how commonly these same challenges are emerging in cities of all sizes across the country. They're all in a similar straitjacket and experiencing similar frustrations.

So good luck with your venture. If you can accelerate the process of review and create a great process of review through the MOU and beyond, then I think we're headed for a much better future.

**The Chair:** Thank you very much, Councillor. Your timing was perfect. We appreciate your coming before us and making your presentation this morning.

#### CANADIAN UNION OF PUBLIC EMPLOYEES, LOCAL 79

**The Chair:** Our next presentation will be from the Canadian Union of Public Employees, Local 79. Good morning, and welcome to the committee.

**Ms Anne Dubas:** Thank you, sir. On my left is Rob Harris. He's one of the researcher-consultants associated with Local 79. You have before you our brief, and I want to thank you all very much for having us here this morning.

CUPE Local 79 represents the city of Toronto inside workers, including occupations such as building inspectors, public health nurses, legal, prosecutors, cleaners, child care workers, and we also have a contingent over at Riverdale Hospital that fortunately is not being impacted by this legislation—not yet, anyhow. Local 79 has represented these workers since 1942. That's almost 60 years. Our members have a proud tradition of providing quality, dependable services for the people of Toronto.

There have been many dramatic changes in Ontario since the original Municipal Act was first written. Local 79 had hoped that this proposed revision would reflect these changes and provide Ontario's communities with the tools and economic resources they need to flourish and to continue providing quality services. We had hoped that it would enhance the input of stakeholders and provide greater democracy. Unfortunately, this has not been the case.

There are serious shortcomings in the new proposed act. For example, while Bill 111 provides for consultations between the province and municipalities, these consultations are not binding. There is nothing in the bill that prevents the provincial government from unilaterally, once again, imposing amalgamation or downloading on municipalities. As well, it does nothing to improve

their revenue-enhancing opportunities. And while the bill defines the powers of local governments within their spheres of jurisdiction, it does not grant them any real autonomy, such as charter status for the city of Toronto.

Local 79's submission will focus on only a few issues. First, service delivery standards: the new act empowers the provincial government to set service delivery standards for municipalities and compels them to report on their performance in achieving those standards—micro-management, in other words, from the province to the local government. This provision creates a number of problems.

Ontario's municipalities are incredibly diverse in size, in the demographics of their populations, in the requirements of their stakeholders and in the level and types of services they provide. A one-size-fits-all standard that uses the same criteria to evaluate a community such as Bracebridge or your community in Peterborough, sir, as it does the city of Toronto does not take into account the very different circumstances that each community must face. The results from such an approach fail to respond to the very different needs the taxpayers have in each of the different communities.

If this measure is meant to impose accountability, it is redundant and unnecessary. Public services delivered by public workers are already accountable; they must answer to the elected officials, who then must answer to the people they represent. Rather than forcing municipalities to create new levels of bureaucracy dedicated to writing reports, this provision should be withdrawn.

Our next point is municipal service boards. The new act will allow the creation of municipal service boards. Transferring public services to arm's-length boards isolates them from public input, scrutiny and accountability. Local 79 is fundamentally opposed to the loss of accountability to the taxpayer these boards invoke.

There is an assumption that substantial savings can be achieved by contracting out services. Governments have simply assumed this to be true, and they have been encouraged by arguments based more on ideology and the desire to cut costs than on proven facts. The real evidence shows that public sector employees provide these services more economically and with greater care than the private sector, where savings are achieved by cutting corners, lowering wages or reducing quality services. In the long run, costs often go up once private companies incur new expenses and they maximize their profits.

Accountability is one of the strengths of our public services. We have excellent services because those who provide them are directly answerable to elected officials and to the public. This is one of the safeguards of our system. It ensures that the needs and interests of the people are recognized. In this current time of crisis, people recognize the value of having public services in public hands, and are demanding that functions such as airport security and local government response teams should be the responsibility of government employees.

Ultimately, the creation of these arm's-length boards leads to this loss of accountability. It creates another

buffer between people and service providers. People know that they can contact their councillor when they have questions or concerns about services, or that they can contact the service directly. This responsibility is lost once services are no longer directly provided by public employees and it becomes unclear exactly who is answerable when the problem occurs.

**1140**

No new sources of revenue: the biggest flaw within Bill 111 is the failure to address the financial difficulties now facing Ontario's municipalities. Our local governments provide services well beyond what was expected of them in the past. Our larger cities, especially our employer, the city of Toronto, have become the economic engines of Ontario. Bill 111 does not provide our cities with the resources or the fiscal tools they need to meet these demands.

The provincial government's downloading of larger financial responsibilities, such as housing, transit and social services, has greatly increased the financial obligations of municipalities. These are substantial burdens. Local governments across Ontario must rely on the property tax base as a major source of revenue. It is increasingly obvious that this tax base is woefully inadequate to support the vast range of services now made available by municipalities.

The city of Toronto faces additional burdens. Many people from communities outside the Toronto structure, outside the 416, commute to Toronto for business, recreation, our ethnic areas, our restaurants and our theatres. They use Toronto's public infrastructure, its roads, fresh water and public parks; they do not pay taxes in 416. This is a serious problem. It needs to be addressed; it's not being addressed. If our cities are to continue to provide these quality services and to drive our economy, they need greater access to economic tools and resources. Again, Bill 111 does not provide them.

There are many examples in Canada and the United States where local governments have been provided with additional sources of revenue to supplement their property tax base: Montreal, Vancouver, Winnipeg and New York City. Our councillors from the city have spoken to that.

Conclusions: Bill 111 creates several new problems and fails to address existing ones. There are major differences between municipalities and between the challenges they face in delivering certain services. The proposed delivery evaluation does not reflect this. Once again, one-size-fits-all standards fail to take into consideration the differences between communities and lead to inaccurate, meaningless findings. Also, the new power to create municipal service boards may lead to the loss of quality and accountability in our public services.

The greatest flaw is where it is silent. Bill 111 provides for consultation between the province and local governments; it does not make those consultations binding and meaningful. As well, there is nothing in this bill that prevents the provincial government from imposing or again downloading on to unwilling communities. Our

modern municipalities are called to provide a broad range of services and to act as our economic engine in Ontario. The bill fails to recognize these realities and does nothing to provide them with the resources and the tools they need.

The new Municipal Act will come into effect January 1, 2003. The government still has plenty of time to consider these and other issues and revise the legislation. Real consultations are needed, and they can only be achieved if the government holds a series of hearings across the full province. We urge the government to take the time so that the people of Ontario are provided with a Municipal Act that meets the needs of our modern and individualistic communities.

**The Chair:** Thank you very much. That affords us about three minutes per caucus for questioning. This time we'll have to move one step beyond the normal rotation: Mr Prue.

**Mr Prue:** Thank you for what is a very good brief. It has mentioned many of the things that concern me about this bill—the sources of revenue not being included.

My questions are around the municipal service boards. Many municipalities have municipal service boards, and I'd like it if maybe you could describe Toronto's circumstance, that you know best. A service board would exist like the Toronto Transit Commission, which is sort of separate and apart from the municipality. How does having a board such as that impact on citizens being able to deal with their local councillor in a way that is different from not having the board at all?

**Ms Dubas:** Can I change that from the TTC board to the police services board, where we've had even greater problems getting access to those people who sit on the police services board, to raise directly with the police services board the concerns of the people? That's versus the system that exists presently, where the committee hears deputations for what sometimes feels like days at a time and the councillors have that direct control, that direct ability to listen to the taxpayer, to the deputants, and make the necessary changes. With the police services board, even the councillors don't have that kind of input. The councillors themselves have to go to the police services board to beg, plead and grovel for changes their constituents need.

**Mr Prue:** Having been a councillor until quite recently, I had a huge problem dealing with Hydro after it stopped being part of the local municipality. When it was part of East York, you could pick up the phone and deal with the Hydro people; now you can't find anybody. Has that impacted your members at all, or the community?

**Ms Dubas:** I think it has impacted the people we serve within the community. As our building inspectors go out, there's a hydro problem; as public health nurses when we have other problems, a lack of heat. Even we can't go. We have to go through the councillor, who then has to go to the next level. It's an additional level of bureaucracy in an era when, for most people, workloads are such that they can't cope. It denies access by the public to the very

services they're paying for with their taxes, or, in the case of hydro, with their hydro bills.

**Mr Dunlop:** It's great to have you here this morning. I just want to make a few comments about some of the things you brought up, and you may respond to them as well. First of all, I don't know if you're aware of this, but there has been a very comprehensive consultation process in developing the Municipal Act as it stands here today. We've seen a number of people here this morning who have been very supportive of that consultation process. The minister has actually said there will be a lot more consultation in the future as we develop regulations etc. I wanted to make that clear, because from your presentation it sounded as though you felt there was no consultation on this.

Secondly, to do with what you call downloading, we call local services realignment. I don't know if you're aware of this. I've spent a lot of time on municipal councils, and for a couple of decades we talked about the duplication that was in the system. I remember Bob Rae's government, between 1990 and 1995, was going to do a lot. They started a series of talks with AMO and these organizations. They called it disentanglement at that time. We carried on. We made a commitment. We had the Who Does What committee, and many of the people who sat on that committee took part in the process that developed the Municipal Act as well.

We feel that's been a fairly good shift of money in the system and, as a result of that, many municipalities today receive a community reinvestment fund. They get a yearly cheque to offset some of their expenses. I just wanted to put that on the record, because I've been very supportive of the moves that have been made in the last seven or eight years as a result of the duplication of services that existed in the system before. I don't know if you have any comments on that, but I wanted to put that on the record.

**Ms Dubas:** Absolutely. Local 79 has been here with the Bob Rae government and with the present government. We believe in fiscal accountability; we do not believe in the duplication of delivery of services. But what we do not accept is when you pass down to the local taxpayers or our employer, the city of Toronto, the requirement to provide those services but fail to provide the funding necessary to deliver them, so the taxpayer is now paying twice. Not only did their taxes pay for the service, but they now have user fees in addition. What you've done is transferred the responsibility, but you kept the money at your level of government and passed the cost on to the taxpayer.

This is unfair. They should not be paying twice. This is the same speech we gave Bob Rae's government. If you are going to disentangle the services, if you are going to download the program or the services, then you download the full cost of delivering those services. You don't keep the money up here.

**Mr Dunlop:** I would just suggest to you that you check with municipalities across the province and see what their tax increases have been in the last six years.

**Ms Dubas:** I also pay taxes in Grey-Bruce, on Bill Murdoch's turf. I have seen my taxes, in Kemble township, go up three times, with a reduction in services, because of this particular government. But as a representative of Local 79, I'm not allowed to make that comment.

**Mr Dunlop:** I would like to see copies of those tax bills. You say they've tripled in five years?

**Ms Dubas:** I will take you down to one of our good ethnic areas and buy you a cup of chai and show you my tax bills from two sections of Grey-Bruce.

**Mr Dunlop:** I'd be happy with just a photocopy of the bills in the last six years.

**Ms Dubas:** Fine, sir. I'll have Mr Prue send me your address and we will provide that, where we've been screwed by this government. Sorry.

**The Chair:** Thank you very much. I appreciate your comments here this morning. Thanks for coming before us.

1150

#### CITY OF VAUGHAN

**The Chair:** Our next presentation will be from the city of Vaughan. Good morning. Welcome to the committee.

**Ms Carolyn Stobo:** Good morning. Thank you for giving us an opportunity to make some brief submissions on the bill. I was surprised to see that you were within the time. I did appear and in fact worked with the Legislative Assembly back at the time of Bill 163, and certainly a lot of the presenters were much over time. I'm very impressed that everything is being done on a timely basis today.

My name is Carolyn Stobo. I'm a solicitor, special services, with the city of Vaughan. I formerly was with the city of Mississauga. First of all, I'd like to point out to the committee members that we have done a written submission, which I believe you have before you at this time, so I'm not going to reiterate what is in that submission. I would prefer to draw your attention to an issue at the forefront for the city of Vaughan, and that relates to its representation on the regional municipality of York council. The reason I'm bringing that issue to your attention today is that we have in the past, through one of the regional councillors in Vaughan, brought numerous requests before the region to change Vaughan's representation on York council. As matters stand right now, the city of Vaughan is extraordinarily underrepresented, both in terms of population and in terms of the regional levy it is responsible for contributing to.

Vaughan has a population second to Markham's at this stage, but it has representation equal to Richmond Hill's. Markham has five members, including the mayor, on the region of York council; Vaughan has three members, including the mayor, as does Richmond Hill. The amount of the regional levy that Vaughan pays exceeds all the other area municipalities in York. We have the highest percentage contribution to the regional levy.

Recently, in August or September of this year, this issue was again brought to the attention of the council of the region of York. We submitted a report to the region through regional councillor Michael Di Biase. That was a very detailed report setting out all the discrepancies in Vaughan's representation. I refer the members of the committee to pages 7 and 8 of the city of Vaughan's submission, which deal with the difficulties we're having in trying to get a reasonable adjustment made. To put it simply, the city of Vaughan has asked for an increase in its representation on regional council from the existing three members to four or five members. That would bring us into a position of greater equity with Markham.

Recommendation 6, set out on page 8, points to the problems we may encounter as a result of the introduction of the present legislation. We'll be placed in a position where, right now, section 218 would preclude any change to regional council composition unless a regulation is passed. The region of York would have to request that regulation. We're asking to expedite this process, so that by the time of the next election in 2003, the regional municipality of York be exempted outright and be included as one of the municipalities governed by this section. In the alternative, we would ask that the current act be either amended or a regulation brought forward immediately to allow the regional municipality of York to readjust representation on regional council.

There are a number of options available which would follow through with the government's efforts to ensure that additional costs, through the addition of further councillors, are not breached. Under the new act, of course, councillors may be given more than one vote, and that would solve the problem. The city of Vaughan could also readjust the number of councillors elected on a ward basis, to reduce it from the current five to four. There are certainly various options, which I'm not going to deal with at any length, which would preserve the government's momentum to ensure that additional costs aren't racked up over the course of time.

We haven't really had an opportunity to thoroughly review Bill 111. We've done our best, in the time we had available, to highlight some of the issues that may pose a problem. If you would turn to the summary of recommendations, that's on page 12 of the report.

Recommendation 3 requests that the "Purposes" section be amended so that additional words are included in the last line of the preamble of section 2. It would read "for purposes which include, but are not necessarily limited to...." We realize that an additional purpose has been included, one over and above what was requested by a number of municipalities at the time of the 1998 legislation. There may or may not be merit to the inclusion of that fourth purpose, but our thinking is that the way it's worded at present may preclude consideration of other purposes and it would be better, since it is a general section and a general statement, to at least make it clear that other purposes should be the subject of consideration from time to time. It won't lock the parties into what's set out at present in section 2.

Recommendation 4 of our report: it's our view that it would be much more appropriate to include the consultation process that will come about in the form of a regulation, as opposed to leaving it to the development of a memorandum of understanding. I'm sure a number of deputants have addressed that issue already. Unfortunately, I wasn't present for those, but I'm sure you've heard about the potential pitfalls of a memorandum of understanding. It's our recommendation, bluntly, that that be changed to a regulation so it's clear for everyone and it's something that everyone will have an ability to enforce.

#### 1200

We're concerned about section 11, in the failure to include additional rules of interpretation. It seems to us that there may be some confusion. If a matter is similar to one of the matters that's governed by a specific power in either part III or in parts IV through XV of the proposed legislation, and if it also is arguable whether it would or would not fit within one of the general spheres available to lower-tier or, alternatively, upper-tier municipalities, there may be a situation where a municipality is unable to act because it's simply not clear enough.

We certainly didn't have the time to develop any specific rules of interpretation that might be added, but we're asking the ministry to reconsider section 11, to add a subsection 11(3), which may set out some additional rules to deal with situations of lack of clarity so we don't end up back where we started, which would be requesting that the government amend the statute to include a specific reference to another power. That type of requirement would defeat the purpose of this bill.

I've already referred to recommendation 6, so I won't go over that again, but that's very important to the city of Vaughan. Because we're in a transition period, it's pretty clear that the region would not have an opportunity to adjust this discrepancy in representation if this bill moves forward to third reading and we're caught in a transition period, so in the year 2003 we will not be ready and able to ensure that the city of Vaughan is adequately represented.

The government has long upheld the principle of representation by population. We have that problem here, plus myriad other problems, given the extraordinary contribution to the levy that the city of Vaughan makes at present and has made for a number of years, which has exceeded all the contributions of all the other area municipalities. The city of Vaughan is growing at an unprecedented pace. The population is now in excess of 200,000. It's clear that this problem has to be addressed, and we don't want to be caught because this legislation has come forward at a time when the issue can't be addressed.

I'd like to commend the Minister of Municipal Affairs, the Honourable Mr Hodgson, and particularly the staff at the ministry, who obviously have spent enormous amounts of time attempting to come to grips with the need to provide a new Municipal Act. We think there probably are many shortcomings. In fact, we don't think

municipalities have the powers they were seeking fully or completely, even a majority of them, but it is a good first step. Thank you for the opportunity to make this presentation.

**The Chair:** Thank you very much for your comments. That affords us about two minutes per caucus for questions.

**Mr Kells:** I appreciate your presentation. You've obviously given it great consideration. I know it's a big act and it takes a little time.

I wonder maybe if Vaughan has a communications problem with the region. I'm not quite sure, but under the current act and under the new act all regional councils can request the minister to adjust the representation. I've just talked with staff, and to their knowledge and to my knowledge, we've never received that request. I wonder if some debate between Vaughan and the current representatives or the mayor directly with the chair would not rectify this problem. We're prepared to entertain that request and pass a reg, whether it's under the old act or the new act, to change your representation. I was just wondering where that stands. Have you had a long-standing problem with the region about your concern?

**Ms Stobo:** I haven't been there for a lengthy period of time. I've just been at Vaughan for about a year and a half at this stage. I can tell you that one of the recommendations in the report Councillor Di Biase forwarded to the region of York late in the summer was, quite bluntly, that copies of this be forwarded to the Minister of Municipal Affairs and that a request be made to the Minister of Municipal Affairs.

**Mr Kells:** Somewhere between him and us, obviously, lies the problem. If it's lodged somewhere in our ministry, then we will respond back to you. If it's stuck somewhere in the region's offices, then you should give them a shake. One way or the other, that request doesn't seem to be before us.

**Ms Stobo:** I brought an additional copy of the report from the office, and I would like to leave that with you to make sure that—

**Mr Kells:** But you'd still need that request. I don't mean to point, but you need that request from the region.

**Ms Stobo:** That's fine. I understand that.

**Mr Colle:** So the city of Vaughan has 200,000 population and it contributes more of the levies than all the other municipalities combined? I didn't hear you say the word "combined."

**Ms Stobo:** No, not combined. The percentage share that Vaughan has of the regional levy is greater than the percentage share of each of the other area municipalities.

**Mr Colle:** Which would be the next in line in terms of levy given to the region after Vaughan?

**Ms Stobo:** It would be Markham. That's in the report at the bottom of page 7 and at the top of page 8.

**Mr Colle:** Markham has what population?

**Ms Stobo:** I didn't have the recent estimate for Markham. They come out at the end of each month or quarterly.

**Mr Colle:** But what is it approximately?

**Ms Stobo:** In April it was—sorry. I'm having trouble reading my own report, but that's not unusual. In April, it was 217,000.

**Mr Colle:** How many representatives do they have at York region?

**Ms Stobo:** Five, including the mayor.

**Mr Colle:** The mayor is one of the five and it's approximately the same population. You have three in Vaughan?

**Ms Stobo:** That's correct, including the mayor.

**Mr Colle:** OK. I think that's an excellent point for making some changes. I suggest that there be a direct memorandum or motion from council directly to the minister notifying the minister that you've made this request of York region in the past, as Mr Di Biase has done, so that at least there's some kind of communication between the ministry and the region asking the region why they haven't responded to what seems a very legitimate request from the city of Vaughan.

**Ms Stobo:** Yes, we'll certainly do that again. I believe it has been done in the past. I'm not absolutely certain, but I believe it has. But we'll certainly do it again.

**Mr Colle:** I suggest you also send a copy of that to your local MPP, Greg Sorbara, so he can at least follow it up. Sometimes, as Mr Kells said, these things perhaps get stuck in the region somewhere or whatever and it's not brought to the attention of the appropriate people in the ministry. At least they can maybe help get the region to pay attention to this disparity. I'm sure they'd be more than willing to look at it, because I don't see the government being opposed to having some equity there, considering the amount of taxes being paid by the residents of Vaughan.

**Ms Stobo:** I might indicate that because it would still be subject to the triple majority rule, it may well be a situation where it would be worth considering making that change to the composition of this particular regional council through the course of the introduction of this legislation.

**Mr Colle:** That's interesting. Thank you very much. That's very informative.

**Mr Prue:** Thank you. I've been trying to read sections 217, 218 and 219 while you were speaking, but quite frankly—maybe we'll have to talk after—I don't see how any of those sections impede Vaughan getting an additional councillor. I don't see how they do.

My real question, and I've only got time for one, is the question about your recommendation 4 on page 12, of not having a memorandum of understanding. You are about the 15th deputation we've heard and this is the first time we've heard this. Everyone else agrees that a memorandum of understanding is the way to go, and we are anticipating that it will be done shortly before this bill comes for third and final reading. Why do you think that having a regulation is superior to the memorandum of understanding?

**Ms Stobo:** First, a memorandum of understanding is not enforceable. It is not an outright agreement. If it was an outright agreement, the parties would be able to

enforce it, but because you're dealing with governmental authorities, it's our view that it would be more appropriate to use the regulation process. That, as well, obviously would be enforceable, but it would clearly set out what numbers have to be consulted. To use a memorandum of understanding may or may not, in the long run, work well. It may well be that whoever is consulted won't necessarily represent the views of various types of municipalities. Certainly the Association of Municipalities of Ontario has long kept the interests of municipalities at the forefront regardless of size, but when you get down to some very complicated financial or other issues it just may not be suitable to use that process.

I don't know how you go about reflecting the views of all types of municipalities, whether they be single-tier, upper- and lower-tier, small, large etc. We think that at least there should be some clear guidelines made available as to what will constitute that consultation process, guidelines as to what might be implemented into either a memorandum of understanding or an agreement or regulation, so that municipalities are clear. Right now, to have it written this way, we haven't seen what they're proposing, what the guidelines will be, so it's very difficult to comment.

**The Chair:** Thank you very much for coming before us here this morning. We appreciate your comments.

With that, committee, we are recessed until 3:30. Just a reminder that when we come back it will be in room 151, so please take any materials you need with you. The committee stands recessed.

*The committee recessed from 1212 to 1538.*

#### CITY OF BRAMPTON

**The Acting Chair (Ms Marilyn Mushinski):** I call the meeting to order. The first deputant is Clay Connor, from the city of Brampton. You have 20 minutes.

**Mr Clay Connor:** Thank you, Madam Chair. First of all, I'd like to thank the committee for the opportunity to speak here today on Bill 111. For those of us who have been involved with reviewing the 1998 draft and before, we wondered if this day might ever arrive. We're glad that it has. We find it rewarding that so many of our suggestions on the 1998 draft have been incorporated into this bill.

The city of Brampton council has endorsed going ahead with this bill. They agree the time has come to get on with the job. But they sent me here to talk about a few areas that we think could improve the bill.

The first has to do with the issue of consultation with the municipal sector. It's ironic that I would say that after saying how wonderful the consultation process was that got us to this point, but there you have it. Section 3 says that the province endorses the principle of ongoing consultation with municipalities, but the act does not address how this is to be done. I understand that the ministry is in negotiations on a memorandum of understanding with AMO to address this, but being a lawyer, we like to see things in legislation. It gives us a little more comfort than

just a memorandum of understanding to which our client may not be a party. We recognize the need for the provincial government to be able to govern quickly and effectively and we understand the concern about confidentiality of cabinet deliberations. You can't always stop and negotiate with the municipal sector; we understand that.

What we're recommending is a provision similar to the Manitoba act with respect to regulations to be made by the minister only—not the Lieutenant Governor in Council, just ministers' regulations. We're recommending that the act provide for the creation of a municipal advisory committee and that the minister be required to consult with and seek advice from the committee in the formulation or review of ministerial regulations, except in cases of emergency, as determined by the minister. We think that would give some substance to the principle that's enunciated in section 3.

The second area I'd like to talk about has to do with the spheres of jurisdiction and what I call the regional paramountcy provision, which is section 13. Subsection 13(1) provides that if there's a conflict between a bylaw passed by a lower-tier municipality under section 11 and a bylaw passed by its upper-tier municipality, the bylaw of the upper-tier municipality prevails to the extent of the conflict. This is a carry-over from the 1998 draft, and when it was in the 1998 draft our concern was that a broadly worded upper-tier bylaw could virtually oust the jurisdiction of the lower tier in an area and in effect be an indirect service migration without using the service migration provisions found elsewhere in the act. We're glad to see that the ministry took this concern to heart, and section 16 is intended to address this.

I don't know if you have the bill with you, but if you don't, I'm going to read 16(1) to you, because I think it could be clarified a little bit: "Under each sphere of jurisdiction, a lower-tier or upper-tier municipality does not, except as otherwise provided, have the power to pass a bylaw with respect to systems of the type authorized by that sphere of its upper-tier or lower-tier municipality, as the case may be." I read that three or four times and had trouble grappling with what it meant. I had a meeting with ministry staff and they said, "The intent is to basically preserve the status quo." If that's the intent, I think you could amend that section to make it a lot clearer. My suggested amendment would be that it would read, "Under each sphere of jurisdiction, a lower-tier or upper-tier municipality does not, except as otherwise provided, have the power to pass a bylaw with respect to systems of the other tier." I think it's a lot clearer in terms of expressing the intent, and I would hope you'd consider that amendment.

The third area I'd like to talk about is economic development services and section 11, the table dividing up the spheres of jurisdiction. We understand that the table in section 11 is intended to reflect the present legislative division of responsibility, and it does that. As such, the power to pass bylaws relating to the acquisition, development and disposal of sites for industrial, com-

mercial and institutional uses was assigned to the region of Peel exclusively, because that's in the regional legislation. However, in Peel the focus for economic development activity occurs at the lower-tier level. In Brampton, our economic development office is the first point of contact for new businesses looking to locate in Brampton and for existing businesses looking to expand. We feel that the power to pass bylaws relating to acquisition, development and disposal of industrial and commercial sites would be a useful tool to assist us in promoting economic development in Brampton. Our recommendation would be that the power to pass bylaws in this area be assigned to the region of Peel on a non-exclusive basis rather than an exclusive basis. It's not taking any power away from the region, but it would enable us to get involved in this area as well.

The fourth topic I want to talk about relates to something that isn't in the bill as opposed to something that is. It has to do with our desire to create a downtown development authority or development corporation within the city of Brampton. Mr Gill will be aware of this initiative. For over a year, the city of Brampton, in conjunction with its business improvement area and the Brampton Board of Trade, has been exploring the creation of a downtown development authority. It's intended to be one entity that would carry out the purposes of both a business improvement area and a community development corporation as they're allowed under the existing Municipal Act. The corporation would be funded by a combination of core funding provided by the city and the use of the existing BIA levy. We think it would eliminate duplication that could occur from having two entities involved in promotion of various sorts of commercial activity. It would be able to promote the downtown for residential as well as commercial purposes. The business community involved in this project are looking to have the power, if there is a rundown business or rundown property in Brampton that's up for sale and the market is not picking it up, to be able to go in, buy the property, fix it up and either lease it, sell it or do whatever.

We met with municipal affairs staff on more than one occasion over the past year outlining this concept and talking about pursuing private legislation. The response we got was, "You should wait and see what is in the new Municipal Act." Well, we've now seen the new Municipal Act and looked closely at the BIA provisions and the community development corporation provisions, and our conclusion is that nothing has changed sufficiently from what's in the present act to allow us to proceed in the way we'd like.

We note, however, that under section 203 of Bill 111, this gives the minister the power to make regulations authorizing the incorporation of prescribed corporations, the purposes for which corporations may carry on business and rules governing them. It is our hope that the development corporation of the type I've described is one on which perhaps the minister might consider making a regulation to allow us to get on with the show and

incorporate this entity. We'd welcome the opportunity to discuss this further with ministry staff and see if it is an avenue worth pursuing.

The fifth area is municipal performance standards and reporting obligations, section 285 to section 305 in Bill 111. The provisions relating to municipal performance standards and reporting obligations largely reflect what was in the 1998 draft, and we generally find these acceptable or something we can live with. But since the 1998 draft, the government has introduced Bill 46, the Public Sector Accountability Act, 2001. If Bill 46 becomes law, it would impose a new set of reporting requirements on municipalities and it could require municipalities to collect and report the same information in different ways to different ministries. That seems like a duplication of effort and increased costs for no really good reason. Our recommendation in this area would be that the provincial government assure Ontario municipalities that compliance with the reporting standards set out in Bill 111 will be deemed to be compliance with any reporting standards under Bill 46, should it become law.

Since I haven't exhausted my time, I'm going to raise one point that it isn't in my brief. The municipal users group for electronic registration asked me to raise this, because they knew I was coming here today. Peel has just recently gone to the electronic registration system. All the documents have to be registered electronically. It's a situation where the law hasn't caught up with the technology. The issue revolves around certification of municipal records. For example, if you've got a municipal road closing bylaw, it's not effective until a certified copy of it gets registered in the land registry office. The provisions in the Municipal Act dealing with certification of records states that basically you can certify a paper record under the municipal seal and the signature of the clerk. The land registry office can't take that. They can only accept documents electronically. We are sort of caught in a catch-22. There needs to be some way to allow for electronic certification of records to allow us to meet the land registry requirements without contravening the Municipal Act at the same time.

#### 1550

What that solution is, I'm not sure. The technical people would need to work that out. But I would suggest that a way this committee could address it and allow this to happen would be to add a subsection in section 253 which deals with inspection of records. Subsection 253(2) is the one which deals with certified copies of records. If you added a provision that would give the minister the ability to make regulations to provide for alternative methods of certification of municipal records, it would allow the staffs of the two ministries to work out a solution that would work for everybody. We are supported by both Teranet and the land registrar in Peel on making this point. It is a technical thing, but if we are doing a new Municipal Act, it is something that I think should be cleaned up.

That is the end of my formal remarks. If anybody has any questions, I'd be pleased to address them.

**The Chair:** Thank you very much. That affords us about two minutes per caucus. We'll commence with the official opposition.

**Mr Colle:** The city of Brampton has in its plans to create a downtown development corporation?

**Mr Connor:** Yes.

**Mr Colle:** What amendment would allow you to undertake that in a timely and efficient fashion? What isn't in here and what change would be required to make that happen?

**Mr Connor:** We would want a provision that would allow us to incorporate a part III corporation under the Corporations Act, with the objects of both a business improvement area and a community development corporation. We would need a provision that would specifically allow for the use of the BIA levy for this expanded list of objects, instead of the restricted one in the present section of the act. That's what we would need, in a nutshell.

**Mr Colle:** In other words, not just the traditional BIA allotting levies to the existing property owners, but you go beyond that for source of levies?

**Mr Connor:** No, the levies would be the same. The purposes for which you would use the levies would be expanded.

**Mr Colle:** Beyond just the streets paved and—

**Mr Connor:** Just for downtown promotions, street-scapes and that type of thing.

**Mr Prue:** My question relates to your first recommendation, that is, that the minister only has the regulations and that there not be a memorandum of understanding. This is the second time today we've heard this. Every other deputant wants a memorandum of understanding. I have to tell you, I'm a little nervous of letting the minister do anything all by himself or herself. They could just amalgamate the city of Brampton. How would you feel about that?

**Mr Kells:** Who would you amalgamate with?

**Mr Prue:** With Mississauga.

**Mr Connor:** We haven't taken a formal position on that one.

**Mr Prue:** But you did.

**Mr Connor:** I'm not saying don't have a memorandum of understanding; I'm saying that in addition to the memorandum of understanding there be something put in that would require the minister to consult with the municipal committee before making regulations.

I can give you an example where I think that sort of consultation would help. This was a regulation that was passed under the Planning Act, but it'll serve the purpose. You will recall that back in 1998 there were changes to the Assessment Act so that the tenants no longer showed on the assessment rolls; it was just the property owners. This had a spillover effect in terms of notice provisions for certain applications under the Planning Act, like committee of adjustment, consent applications—to remove the option of giving notice of applications to "assessed persons," because the tenants wouldn't get the notice then; they were no longer showing on the roll. The

required regulations were filed September 14, 1998. Under the Regulations Act, they're effective the day they were filed unless there's something in the regulations to the contrary, and there was nothing.

The ministry sent letters to municipal clerks and planning directors on September 24, 1998, and the regulations were gazetted on October 3. Basically, the rules had changed at least 10 days before anybody got notice of it. There were meetings that were going on. We had to adjourn a number of applications and recirculate using a different notice provision.

Had there been a formal method of consultation with the municipal sector before this regulation came in, we could have avoided this problem. We'd have had at least a heads-up that something was coming down or we could have requested that an effective date be put in the regulation so it would take effect a week after it was gazetted or something, so we'd at least have an opportunity to gear up instead of being put in a hole where there was this gap. I think that's the sort of consultation that would be helpful to the municipal sector and also to the public.

**Mr Raminder Gill (Bramalea-Gore-Malton-Springdale):** My colleague the parliamentary assistant has some questions, but I want to compliment you in the sense that this is a very thorough analysis you've done and some of the recommendations you've brought make a lot of sense. Perhaps when the ministry is looking at these things, it will try to incorporate them.

One of the things we recently did, as I'm sure you're aware—the chair, Emil Kolb, was there too—was on the GO funding. I know we didn't discuss that. The absent party is the federal government on many of these issues. I think that's something we should always bring up and talk to them about it. But I want to thank you for a great submission.

**Mr Kells:** Very briefly on your recommendation 3, you say the section "does not express the policy intent of the section." I just want to tell you that our intent is the status quo, and I suspect you know that. If our wording isn't sufficient, we will take a look at it, but the intent is to keep the status quo.

**Mr Connor:** And I think that's the intent of my suggested change as well. I hope there's a middle ground we can work to to achieve that.

**Mr Kells:** OK. We're on the same wavelength.

**The Chair:** Thank you very much for coming before us here this afternoon. We appreciate your comments.

## ONTARIO TRUCKING ASSOCIATION

**The Chair:** Our next presentation will be from the Ontario Trucking Association. Good afternoon. Welcome to the committee.

**Mr Doug Switzer:** Thank you very much for giving me an opportunity. I see you're running a little behind time, so I'll try and keep my remarks short.

I'm here to speak today to part IV, the licensing and registration aspects of the act, which is of concern to our

industry. Some may know the history that in the late 1990s certain municipalities sought to impose licensing regimes on trucking companies in order to generate revenue for themselves. At that time, the minister of the day put through a regulation that exempted the trucking industry from that part of the act, and our primary concern is to maintain that exemption.

I would like to thank the ministry for involving us in the discussions around this particular part of the act. We did have an opportunity to meet with the ministry and a number of other people concerned about licensing and registration. Two things that came out of that discussion were that there was a consensus that licensing should not be used to generate additional revenues for municipalities and that licensing regimes should not be put in place that duplicate other government licensing regimes, such as provincial or federal regulations.

On the revenue side, we're very pleased to see that subsections 150(2) and 150(9) fairly effectively deal with the issue of revenue generation. Subsection 150(2) states that licences can only be brought in where they are to protect the health and safety of citizens, for nuisance control or for consumer protection, and subsection 150(9) goes on further to explicitly state that the fees charged for licences can only be used to cover the cost of administration enforcement. We're fairly pleased that those sections, we think, address our concerns on revenue generation.

On duplication, clearly the trucking industry is subject to a great deal of regulation by the provincial government. We feel very strongly that any sort of municipal licensing scheme would only duplicate what the province already does.

We do have one concern about it, and that is that we have been assured by the minister that as per section 160, which gives him the power to pass regulations exempting businesses or classes of business, that exemption will continue. We would have preferred to see that exemption in the act. Subsection 150(7) does explicitly exempt a number of industries. Manufacturing, industrial, wholesale, and natural resources exploitation are all explicitly exempt under the act, and I think we would have been more comfortable with it being included in the act rather than leaving it to regulation. As I said, we do have the minister's assurance that that would continue, but that is something we would like you to consider.

1600

**The Chair:** Thank you very much for your comments. That leaves us lots of time for questions, in fact just over five minutes per caucus for questions. This time the rotation will start with Mr Prue.

**Mr Prue:** I don't know if I can ask five minutes worth of questions. I think your key point—

**The Chair:** It's not an obligation.

**Mr Prue:** No, no, I know that, and you know that I do not always take my time. I'm unique around here.

It seems the only thing you're worried about is the exemption. You want it enshrined, and that's your whole position. Is there any occasion where the trucking in-

dustry would fall completely under a municipal jurisdiction? I'm thinking about some large place like Toronto, where you may have inner-city trucking that really doesn't get too far out of the 416, where it should be regulated by the city; or maybe someplace in northern Ontario, and I'm thinking of Howard Hampton's riding, where it's not likely that the truck would go too far afield in an area the size of France. I'm just trying to think of those things. But I do agree; I mean, I understand you can't license them all along the whole 401 going to Windsor.

**Mr Switzer:** I can't think of any companies off the top of my head, to be honest, that only operate in one municipality. In fact, most companies operate even outside of our province, but I think your example—a northern Ontario log-hauling company may operate solely within one municipality. They tend to be unique, though, and a lot of the roads they're using are logging roads that they themselves put in. It's a more unique relationship there.

I should point out that when we're talking about licensing, we're talking about an operating licence for trucks. This would not impact on the special permits that municipalities require for oversize or overweight vehicles. That would not be affected by this and certainly we are not seeking that kind of exemption. Municipalities would still have the right to impose permit conditions for unusual configurations.

**Mr Kells:** You got your position on one piece of paper, and I'm pleased about that. Again, as with the previous delegation, we have no argument with your position. I speak with the minister, I don't necessarily speak for him, but as he's given you the assurance that it would be in the reg, I feel comfortable anyway that that will be forthcoming. Whether we go about amending our act to cover it—I'm not sure that's necessary. It might be a little easier when you're mailing stuff out to your members to say it's going to be in the act. The reg, as you know, tells you how to implement the act, so we're talking about an implementation problem, if there is a problem, as opposed to legislation. With all due respect, I think you're covered very well, but I can understand why you'd come down here and put it on the record. It's now on the record that the minister assured you and it's my understanding from the ministry that he did too. So there, it's on the record, and I think you're pretty safe.

**Mr Switzer:** We do feel comfortable with the minister's assurance. I have no reason to doubt his goodwill in this matter. I think it's only because there are other industries that are already covered under the act. If there were no other industries already under subsection 150(7), then we would feel that everyone was under the regulations, but since manufacturing and industrial activities are already covered, we were hoping to be included in that same area. But we appreciate your—

**Mr Kells:** If I may, Mr Chair, that's a good point and I'm glad you brought it up. We'll take that one under advisement. Maybe it's easier to just add one more industry to the act.

**The Chair:** Mr McMeekin.

**Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** Mr Chairman, it's written in the good book that the 11th beatitude is, "Blessed is the man who, having nothing to say, refrains from giving worthy evidence of the fact," so I'll just say keep on trucking.

**The Chair:** Thank you very much for coming before us with your comments today.

#### ONTARIO HOME BUILDERS' ASSOCIATION

**The Chair:** The next presentation will be from the Ontario Home Builders' Association. Good afternoon. Welcome to the committee.

**Mr Murray Koebel:** Good afternoon, Mr Chair. Good afternoon, committee. My name is Murray Koebel, and I'm here today on behalf of the Ontario Home Builders' Association. I'm here, actually, on behalf of Mr Albert Shepers, who's our current president, who was unable to make it today. But I also sit on the board of directors of the warranty program, I'm a past president of the association, I'm the chair of its economic review committee, and I'm a past president of the Greater Toronto Home Builders' Association. I also—this is my day, I guess—sit on the board of directors of the Ontario New Home Warranty Program. Through all of the above experience and my 25 years of home building experience in many municipalities across Ontario, I have acquired extensive first-hand experience regarding many issues affecting the housing industry and with this act.

Having said all of this, I would now like to state for the record that the Ontario Home Builders' Association supports the intent of Bill 111 and is hopeful that this important piece of legislation can move forward.

The OHBA represents approximately 3,500 member companies and is the voice of the residential construction industry in Ontario. Our members live in and have helped build homes in most, if not all, of the municipalities in Ontario. The residential construction industry poses a unique situation for builders, as they will typically conduct their business in numerous municipalities over the course of a year and in many instances at the same time. Therefore we are keenly interested in the potential impact that a new Municipal Act will have on building companies.

The OHBA was involved in the very lengthy consultation process leading up to this legislation, and we're very encouraged to see that we've been able to progress to this point. We feel the ministry has done a commendable job of balancing the many issues facing a wide range of stakeholders into what we feel is a very fair and reasonable piece of legislation.

The introduction of this act is very timely in that it coincides with many of the other principles the provincial government had set out for the Building and Regulatory Reform Advisory Group, otherwise known as BRRAG, and also the provincial Smart Growth initiative. Those stated goals were to reduce red tape, streamline govern-

ment processes and ensure that any fees and charges are necessary and reflect the cost of delivering the service. The home building industry is one of the most highly regulated and taxed industries within Ontario, and as such we encourage the government to continue to work with industry to find ways of eliminating unnecessary regulatory burdens and punitive taxes from the backs of builders and ultimately from consumers.

While many of the details will have to be worked out through the regulations, which I think I just heard Mr Kells referring to, I would like to take this opportunity to highlight a few areas that must be addressed within the regulations to ensure that the intent of this bill is met.

We understand the purpose of municipal licensing as being to protect the public with respect to health and safety, consumer protection and in some cases nuisance control. Under the current system, municipalities are not in a position to enforce these requirements on a lot of builders, but a separate body has been given the responsibility and authority to do just that. The Ontario New Home Warranty Program requires that every builder working in the province of Ontario must, by law, register with the program and enrol each new home built. This governmentally regulated body has, for the past 25 years, been responsible for protecting consumer interests and guaranteeing that builders meet prescribed standards. The ONHWP has been successful in fulfilling its mandate and is a model of success for other provinces and countries to follow.

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The draft act states that self-regulating industries can be exempted from municipal licensing, and the ONHWP fits every criteria for this regulating body. Allowing municipalities to license builders is nothing more than an added tax to an already heavily taxed industry and would provide no real service to consumers. Affordability of housing is a significant issue facing the province and we must look at every possible angle for savings and streamlining possibilities to reduce costs, and the elimination of municipal licensing would be a step in this direction for sure.

That's all we really have in terms of comment on this legislation. We probably had a bit more time, so we're going to end up way ahead of schedule, I guess. We'd like to thank you for this opportunity to speak before you this afternoon and would welcome any questions you may have.

**The Chair:** Thank you very much. You have in fact afforded us lots of time for questions. Again, we have about four minutes per caucus. We'll start the rotation with the government members.

**Ms Marilyn Mushinski (Scarborough Centre):** Thank you for your presentation, Mr Koebel. It was very well articulated. I just have one question. The Ontario New Home Warranty Program: unfortunately, I don't have the written handout, so I'm not sure which section it would apply to in the act, but are you saying you would like government-regulated bodies to be enshrined in the act or by regulation?

**Mr Koebel:** The MCBS—corporate and business services—already oversees that act, which is the Ontario New Home Warranties Plan Act. That act in itself legislates that all builders of new homes must be registered there and enrolled there annually.

**Ms Mushinski:** Right. So those bodies that are regulated under that act you don't want to be regulated under this act. Is that what you're saying?

**Mr Koebel:** That's correct. There's no point in duplication, and it has been in place for approximately 25 years.

**Ms Mushinski:** Yes, I know it very well. I was on a municipal council for 12 years. Thank you.

**Mr Kells:** Just as a follow-up, we will be consulting with you on the regs as to whether that needs to be in a reg or doesn't need to be in a reg, so you'll have plenty of opportunity to touch on us.

**Mr Koebel:** That's great. I appreciate that.

**Mr McMeekin:** As one who hasn't been part of your consultation and hasn't seen your brief—I haven't seen any of the briefs, by the way. We just note for the record, Mr Chairman, that it would be handy to see any copies of material that has been produced through the consultation. But just moving forward with that, are there things you recommended in your consultation with the government that were not incorporated in this act? As the second part of that, are there things you don't see in the act that you'd like to see?

**Mr Koebel:** We really came here today to support the act as it has been tabled presently. We can get you copies of the discourse pieces that have been back and forth. I don't know if my colleagues have any here today, but we can certainly get them to you.

I think we're satisfied with the bulk of what else we see in there. The only item that I heard a little bit of talk about last Friday was that there was something I'm not quite sure made it into the act; I think it was for municipalities to be able to deal with property tax issues in the case of defaults and relative also to brownfields. I know municipalities have often been very reluctant to take over. Some properties might in fact have a negative value, and of course there's the tax bill sitting out there unpaid and the municipality has to decide what to do about it. I think forgiveness of the tax was one of the issues. I was at a conference put on by the Ministry of Housing last Friday for a few moments. I heard Minister Chris Hodgson speak there and he was alluding to this thing. My understanding is that it's not presently in this version, and I don't know whether it will come as an amendment or not.

That would be our only thing. We were in favour generally of allowing municipalities whatever assistance necessary to deal with seriously delinquent properties. I'm not talking about someone who goes into arrears by a month, but when something's gone the full term of three years and the proponent or the owner is not in communication with the municipality and has no intention of paying the taxes, then we think it's fair and reasonable that municipalities should be able to forgive their own

tax, which I think the law, if I'm not mistaken, presently prohibits them from doing. For the most part, I think this occurrence happens on probably fairly seriously disadvantaged properties, because I can't imagine why anyone else would walk away from a property if there was still some value there. They could sell them, or there's a variety of things to do. So these would generally be problematic properties, and to help municipalities to deal with those would be a great advantage for municipalities.

**Mr McMeekin:** You may or may not be aware, sir, that there's some separate legislation, brownfields legislation, to try to cover off some of those points.

This is a very important industry and one that I personally have all kinds of time for, so I appreciate your coming out. I'm in regular contact with the Hamilton Halton Home Builders Association and I'm very supportive of their work. I expect you'll be back to talk about the proposed building code when we get to hearings on that as well, and I'll look forward to seeing you again then.

**Mr Koebel:** Great. Thank you very much.

**Mr Prue:** Again, we were not party to—I think there were 300-some position papers that were forwarded to the government, one of which came from your industry. I'm a little curious and maybe you can tell me whether this was your position.

There is a section in the act which says that municipalities can have only 10 spheres of influence. In the old act there were 13 spheres. The three that have been removed all seem to me to fit very neatly into construction. I'm just wondering whether you wanted them removed, and if you did, why? The three that have been removed are the health, safety, protection and well-being of people and the protection of property, which I guess is adjacent property to construction; the natural environment, and I'm thinking here in terms of the Oak Ridges moraine and other places about which there's some controversy with the construction industry; and the last and probably most important that's been removed is the ability of municipalities to regulate and license and make bylaws for nuisance noise, odour, vibration, illumination and dust, all of which result as a result of construction. Has this been removed because of your position?

**Mr Koebel:** I can make some comment on the first two. The last one about noise, nuisance and dust, I'm really not quite sure. There are lots of people besides our industry that help produce those things, but I can address the other two.

The health and safety elements: I'm trying to remember what exactly we had in our submission, but health and safety with respect to construction is one of the main tenets of the building code, which is covered by other legislation. I'm not quite sure whether its not being in this act would be part of just disentangling things or whether it was felt by us—and we may have been silent on some of these things too. But in terms of our industry, health and safety is in the preamble to the building code and is stated as one of the principal objectives of that code, so that's covered by that legislation.

The natural environment: once again, I suspect we were relatively silent on that, but I think we would take the view that the natural environment, which is of course of great importance to all of us, is covered by other legislation and is covered by the Ministry of the Environment in their legislation and in fact is a large feature of what every development has to go through in terms of getting environmental clearances, the potential for environmental impact statements on sites that would affect the environment and that sort of thing.

I suspect the first two, the health and safety issues you mentioned and the natural environment issues, are probably covered by other legislation and I'm not sure they belong in the Municipal Act per se relative to new home industry. I think the more you start to target the new home industry within the Municipal Act—there are so many other pieces of legislation that apply and we have so much overlapping legislation that affects our industry and our business.

That's the only thing I could volunteer as to why those would be there. The nuisance things, I really don't know. I think municipalities should be allowed to deal with some of those things, but perhaps there's other legislation. I would be far less familiar with those two.

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**Mr Prue:** I just want to be clear, because we have not seen what you submitted to the government. I just want to know, to the best of your knowledge, were these included in your earlier submissions to the government? If they weren't, then we have to assume it came from one of the other 300-plus deputants.

**Mr Koebel:** I don't believe we made any specific comments on those, but those would be our industry's positions and my comments on those three items.

**The Chair:** Thank you very much for coming before us here today. We appreciate your comments.

**Mr Koebel:** Thank you very much for having us here.

#### ONTARIO COMMUNITY NEWSPAPERS ASSOCIATION

**The Chair:** Our next presentation will be from the Ontario Community Newspapers Association. Good afternoon. Welcome to the committee.

**Mr Don Lamont:** Thank you for the opportunity to participate in the hearings today. The Ontario Community Newspaper Association supports the government's commitment to update the Municipal Act and we offer recommendations to make the legislation better, both for the public and for newspapers.

Ontario Community Newspaper Association comprises 262 community papers. With a circulation of 3.6 million and approximately 67% of the adult community reading their newspapers, that translates to 5 million readers weekly. Ontarians rely on their community newspaper as their primary source of local news and information. We see local government in action on a regular basis perhaps more than any other group. Our knowledge is forged from experience.

In theory, the new Municipal Act enables the one-time child of the province to mature and to become an adult, and municipalities are then given the flexibility and latitude in certain areas to conduct their affairs as they see fit without the province, perhaps, serving as a baby-sitter.

The proposed act sets up some new dynamics between the public and the municipality, particularly with respect to notice and advertising. To attain open and accessible government, the new act leaves it to local citizens to hold their government accountable for its actions at the ballot box or through the courts. For the new model to work in practice, we feel that the powers of the municipality and the powers of the public must be evenly balanced. In essence, it's like the scales of justice. We need an equal balance in this relationship.

As we go through the act, I'd like you to keep score and to see how the new act tips the balance in one way or other in favour of the municipality or the citizen toward achieving accountable and open government.

Our experience shows us that to ensure accountability, both the public and the media will need to have the Municipal Act strengthened in three areas, and that would afford the public tools to carry out their responsibility to hold government accountable. Those areas are in camera meetings, public notice, and advertising.

We are pleased that the government didn't liberalize the provisions for the in camera meetings, as proposed in the 1998 consultation, and stayed with essentially the same provisions in section 239 of the new act. But now community newspapers already see too much abuse of in camera meetings with no consequence. The new act gives municipal councils insufficient direction about what to communicate to the public about the nature of the topic to be covered in camera, and that is a disadvantage to the public. In the absence of direction from the government, the courts would have to set precedents about how to clearly specify topics to be discussed. The balance here is tipped toward the municipality. Score one for the municipalities.

Through the new municipal act itself or by promoting best practices, the provincial government should clearly mandate municipal councils to specify as much as possible about the topic to be discussed in camera. For example, when discussing the acquisition of land, we propose that you go to the next level and say, "We're discussing the acquisition of land for a new municipal building." This approach, we believe, should be followed in three areas: with the notice of meeting, minutes of meeting, and statements made in the open portion of the meeting. This extra information will enable the public to satisfy itself about the appropriateness of council's decision to hold an in camera meeting behind closed doors.

We believe the onus must shift to greater specificity about what's to be discussed in camera; otherwise, citizens are hamstrung because while councils must vote in public, they can do so without ever specifying what the matter is about. The public also might eventually find out

about the matter that was discussed in camera, but someone must perhaps file a freedom of information request to obtain that information.

The new act adds the disposition of land to the list of topics that can be covered in camera. We believe this provision will work to keep the names of potential purchasers, including land developers, behind closed doors and out of public view, and that's wrong. While the price of land should be kept confidential when negotiations are underway, we believe the Municipal Act should enable the public to know who the bidders are. Otherwise, score two for the municipality.

Our experience shows that there will continue to be violations of the in camera provisions of the act. There needs to be ways to hold governments accountable between elections. We recommend that a mechanism be established to hear complaints from citizens concerned about in camera meetings, perhaps by broadening the powers of the office of the privacy commission or establishing some other body.

This recommendation would give citizens recourse without having to incur the expense of going to court. The act of sanctioning a council would serve as a deterrent by publicly affirming the transgression, that something indeed had taken place that wasn't appropriate, and would clearly send a message.

We recommend that the decision of any council to hold meetings in camera should be subject to review by a court under the statutory power of decision provisions of the Judicial Review Procedure Act. And we further recommend that all out-of-pocket expenses resulting from a successful action become the responsibility of the municipality.

This recommendation clearly carries greater impact and places the onus on council with respect to this balance to think twice before conducting business in private. This recommendation would codify the process of seeking recourse into decisions made; plus, all business done as a result of council's decision would be considered null and void.

These provisions—our recommendations—speak to the heart of open government and democracy. We believe that it is so important that citizens must have prescribed recourse.

Bill 111 references two ways to communicate with the public, namely, through public notice about pending decisions and advertising about government activities. In regard to notice, the new act sets no standards or ground rules about how to inform the public about decisions that will affect their lives. Unless specified otherwise under section 251, they can do so in a form and in a manner and at a time that the council itself considers adequate to give reasonable notice under that provision. Score three for the municipality.

With respect to advertising, the current act gives local governments direction about informing the public about the municipality's general activities. Except in certain instances, Bill 111 does not define how to publish general information about municipal government to keep citizens informed. In Section 299, the minister decides

when and how municipalities inform constituents of their day-to-day activities. In this balance, score four for the municipality.

The new act should specify that municipalities themselves should not be the exclusive carriers of news and information about municipal activities. Municipal governments could set up their own media, compete with others and begin to filter messages to the public. Requiring municipalities to utilize independent, community-based delivery vehicles would reduce any opportunities for abuse.

We recommend that the provisions for notice and advertising in the current act be carried forward to the new act.

The current act prescribes how notice and information must be given simply because without such standards—witness in camera provisions—the authors understood when they wrote the old act that municipalities would not always provide adequate notice. The new act assumes that the public will hold secretive or uncommunicative councils accountable during an election, but that may be too late to satisfy citizens who were wronged in the first place by inadequate notice or lack of information.

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Again, the new act assumes that municipal governments will be held accountable by informed and engaged citizens, but gives the media, and hence the public, little assurance or few tools to ensure that vital information is indeed available to enable it to do its job. Adequate and reasonable notice is left up to council itself to decide—not citizens, not the province—and there are no standards and no expectations about what is adequate or reasonable notice.

Instead, the onus is placed on citizens to secure the expertise and to go out of their way to gain necessary information, and this seriously handicaps that delicate balance. I think it's too much to expect. That's it: set, game, match to the municipality.

With the provincial government removed from the equation now and without the changes we propose to the new act, accessible, open, accountable and responsible municipal government may be even more elusive than ever.

**The Chair:** Thank you very much. That gives us exactly three minutes per caucus. We'll start this time with the official opposition.

**Mr McMeekin:** Wow. Mr Lamont, thanks very much for coming out and sharing those. I would just say by way of overview that as one who has been in the chair as mayor of a great municipality—one you know quite well—I've seen it cut both ways, where confidentiality provisions weren't covered off well enough. I've seen the price of land for major acquisitions triple because of information that shouldn't have been out there. I've also seen situations where I frankly think councils have gone in camera when they quite properly, on reflection, should not have.

I am particularly appreciative of your references to clarifying the standards. I don't know that you made any

specific reference to the lack of penalties with respect to abridgement of whatever standards are in place, but let me begin with that. Is that a concern your association has?

**Mr Lamont:** No, basically our concern with some recourse applies to the in camera provisions. That's essentially where our concern lies.

**Mr McMeekin:** I think the difficulty we have, Mr Chairman, notwithstanding my gut concurrence with much of what Mr Lamont has said about the importance of openness, transparency and what have you, is that the act is fundamentally predicated, as I understand it, on the assumption that we want to give some life and some real meaning to the idea of trust and respect for municipalities and do not want to be overly prescriptive. So that's something we're going to have to struggle with.

Don, we'll have to take your comments to heart, particularly those around standards, and give some more than passing reflection on those to see how we can toughen up those provisions.

**Mr Prue:** Just one question, which relates to the newspaper's right to know what is going on. As a municipal councillor in East York, I have to tell you, I don't ever remember the newspaper getting hold of documents, but in Toronto I could guarantee you to read the entire document the next day in the newspaper every day, whatever was confidential. It seems to me that the newspapers are very adept at getting this information, apart from what you're saying. It may not be true in a small municipality, but in a large place like Toronto, it seems they can get it with ease. I'm curious as to why, in a place like that, you think it needs to be toughened even more, when it is so readily leakable.

**Mr Lamont:** What we're saying basically is that it helps the public to make its decisions about the appropriateness of in camera meetings if there is a little more prescription, a little more information given about what the topic is, but not revealing any of the components that need to be confidential.

I think when it's clear what the topic is being discussed, at some point or another it may be possible for a newspaper to secure information about what that pertains to. So what we're saying here is that in order to keep the flow of information open, providing more detail about what the subject matter is enables us to do our job. That's basically the point we're making. I realize that in certain instances the information isn't given to a municipality, but I think here we're talking about the in camera provisions that are written into the legislation.

**Mr Prue:** So all you're basically asking for is that it remain more or less the way it is now but that the head of council, or whoever is sitting in the chair, has to articulate clearly that this involves a land sale for municipal purpose, or that this involves a personnel matter, without naming who it is, or this involves something which is litigious and is in a court of law, as opposed to "This is just a private matter." That's all you're looking for?

**Mr Lamont:** I think the act specifies the topics under which—

**Mr Prue:** Yes, it specifies that now. That's what I'm trying to find out, what—

**Ms Mushinski:** That's what he needs.

**Mr Prue:** Yes, I know. That's why I'm trying to find out what more he needs.

**Mr Lamont:** What more we need would be to say, if we're talking about a matter of acquisition of land, for example, specify that it may be a matter relating to a new municipal building. It's going another step to provide information. It doesn't prejudice what the price would be or who the bidders would be. It's talking a little bit more about what the subject matter is. Our suggestion here is that that could be done by way of wording in the act or best practice that the ministry itself would work with municipalities in terms of helping them to articulate that. If it does go the best practice route, there has to be some commitment that indeed that course is being followed and it's formal.

**Mr Kells:** Mr Lamont, this morning we had a number of municipalities before us. One of the things that came through loudly and clearly was that they didn't want this act to become too prescriptive. They felt that good municipal government is obvious, that they've done a good job and they really—Mayor McCallion in particular said, "We really have done a good job and we really don't need the senior level of government telling us how to operate." So with all due respect to your presentation, you certainly are suggesting here that there be more micro-management on how they do business, particularly, as you say, in the in camera area. I know you're going to answer in a few minutes, so just let me go down the list.

On the disposition of land, there are obvious reasons for us adding the sale of real estate. It's not necessary for the public to know who the bidders are, but I think it's pretty important that the public knows who the bidders were, because obviously the price and those things become public knowledge after the fact.

To get to the violations and the in camera provisions, actually, the job of the fourth estate is well known. It's what you do and it's why people read the newspapers, because if you do your job well and deliver the information, then the public gets the information. It would seem to me that in most instances the good reporters—and, as you know, there are good and bad, but by and large there's more good than bad by quite a large percentage—are protecting the public as we expect them to do, and they do it very well, particularly at municipalities. Without good weeklies, or good dailies, for that matter, the public wouldn't know what's going on.

Finally, to use your example of your own newspaper council, what interests me there is that by the time it has already been in the paper, the damage gets done before it's rectified. I'm not suggesting that in camera positions do that all the time, but here you are suggesting that this is a worry and that the public has to suffer through mistakes made that you people rectify with your press council, but always after the fact.

Finally, we have a very, we think, detailed part of the act on meetings and we think it covers it fairly well; it's section 239. Your worry us about the need for notice to be carried in the paper. It's our understanding that in most cases municipalities do do that. I'm wondering if you've found in your investigations over a period of time that that's not the case.

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Finally, we do have your previous presentation, where you brought this concern to our attention, and we thought we'd listened to you. The existing rules permit municipalities to discuss in private the acquisition of real estate. All we're really adding is allowing them to discuss the sale of real estate in private as well. We've listened. We're not sure exactly what your concerns are, even though I've read them.

**Mr Lamont:** Let me proceed to answer. There are a few questions in there. When you heard from municipalities, you understood how they see this all working out, and that's from their perspective. What we were talking about is there needs to be a dynamic balance between the way media or the public see things and the way municipalities see things, because there may be a different perspective that each brings to the equation.

What we're saying from our view is that to make the system work, that is, that the public is now going to hold councils responsible, not by referencing some act or some other standard, you have to empower the public to enable them to hold councils accountable by giving them information. If you put too much onus on how the public has to go about getting that information, it won't allow that dynamic tension to take place and to have the proper balance to hold councils accountable. That's the system that the new act prescribes. We're saying, give us the tools. We'll play that role of helping keep council accountable through the public, but we need the tools.

The second point would be that the press council, as a tool, in terms of an entity that would make a ruling or serve as an arbiter—that does happen after the fact. That's why we offer the second provision. It's possible to seek recourse through the courts now, but by making a provision for council to be subject to review by statutory power of decision, that means it becomes possible to unravel the decision that might have been improperly made in camera. Retroactively, it gives the opportunity for recourse to unravel that decision that took place.

The third point would be—

**The Chair:** I'm going to have to ask you to make this your final point because we're over time.

**Mr Lamont:** Just to one of the questions that was raised, Mr Chair, the current act does prescribe how councils are to give notice. It says how it's to happen. That methodology used there may have something to do with the fact that notice oftentimes is adequate and how it is given is adequate. If you take away the prescription about how, it leaves it too much open as to what course council might take to inform citizens about what's going on, and that methodology may not be satisfactory.

Thank you, Mr Chair.

**The Chair:** Thank you very much for your comments. We appreciate it.

## TOWN OF CALEDON

**The Chair:** Our next presentation will be from the town of Caledon. Good afternoon. Welcome to the committee.

**Ms Carol Seglins:** Good afternoon, everyone. I'm Carol Seglins, the mayor of the town of Caledon. I have provided some documentation for my report. I'll actually keep it very succinct, so I don't think you'll have to worry about deadlines.

First of all, I want to open by saying that I agree with the AMO position and much of what you've heard already earlier today. I'm speaking to another aspect of the Municipal Act. I'll go over it quickly.

Despite the undoubted progress made by the new Municipal Act, the council of the town of Caledon is disappointed that the proposed act fails to give a broad sphere of jurisdiction to municipalities in the fields of public health, natural environment, and public nuisance. All of these are of significant interest to the people of the town of Caledon, and we are well recognized as the municipality that has had considerable interest in environmental protection. So I don't think this is anything new to anyone.

As far as the points: insofar as municipal council is the level of government closest to the public, the public expects municipal councils to be able to legislate broadly in the fields of public concern and to set community standards.

In growing areas in or near the greater Toronto area, the public is concerned about the protection of the natural environment and the preservation of landscape features, and about the effective control of various forms of public nuisance, in order to preserve the quality of community life. I think the Oak Ridges moraine legislation that's just come forward and Caledon's participation in that certainly supports that point.

In such areas, provincial standards of environmental protection and public health may be inadequate to respond to community concerns. I think we've seen that in the smoking bylaw. We're pleased to at least see smoking able to be controlled by municipalities in the new act.

Also, however, Caledon has adopted a woodlands policy bylaw, which applies to woodlands in excess of a half hectare. This standard reflects the public concern about the disappearance of woodlands and the importance of forested parcels in our headwaters area. The new Municipal Act would authorize the town to apply woodland protection only to areas in excess of one hectare, rather than the half hectare, which is important to Caledon. We would like to have the stronger protection.

In response to public concern, Caledon council has been considering regulations and management of the cosmetic use of pesticides. By specifying that council's authority in these three spheres is to be interpreted

narrowly, the new act would cast doubt on Caledon's jurisdiction to respond to this concern.

It's interesting to note that in the Oak Ridges Moraine Protection Act, it is expected that municipalities in the Oak Ridges Moraine Protection Act will be expected to control pesticide use in that area, and yet in the Municipal Act we're not given the jurisdiction. I think it has been recognized in the recent environmental policies of the Oak Ridges Moraine Protection Act, and I would ask that you would address it again.

The 1998 draft of the legislation proposed to give municipalities a broad sphere of jurisdiction in the areas of natural environment, public health, and public nuisance. This would have given municipalities clear authority to enact legislation which augments any provincial regulations.

We regret that the proposed legislation, despite the advantages of the new act, fails to live up to the promise of the 1998 legislation in these three areas.

Those are the general points I wanted to make. I've included other documentation that has been directed both to Minister Hodgson and Minister Witmer. We expect that when we have stakeholder consultation and develop stronger legislation, we would ask for the ability to legislate in that manner. I've also included for you the report that's come from our council, and it reiterates these points.

I would hope, when we have seen what has happened with smoking, that we won't be looking at another 50-year period before we can address new health and emerging problems that may impact both our public health and our environment. We look at air emissions and watershed protection. We would like the ability to manage those, not trying to not have regard for provincial and federal legislation but in fact to be able to work with provincial and federal legislation.

Although the act does indicate that there will be areas where we can be more restrictive, it's not clear that we would be able to do it in these areas. It would then lead to costly either court challenges or OMB challenges, and I don't think that's useful for either the municipality or the people who are impacted.

Those are my points. I'm happy to answer any of your questions.

**The Chair:** Thank you very much. That leaves us just over three minutes per caucus for questions. This time the rotation will start with Mr Prue.

**Mr Prue:** This was a matter that I've asked a couple of deputants about: the removal from this particular section of health and safety protection, natural environment, and nuisance with noise, odour, vibration, illumination and dust. You have spoken briefly about the effect this would have on the use of pesticides. It's my understanding—perhaps the members opposite could tell me if I'm wrong—that the Supreme Court case in Hudson would not have been possible with the legislation we have here before us today. Ministry staff has indicated that section 130 has been drafted to take that sort of right away from municipalities.

**Ms Seglins:** That's my understanding as well.

1650

**Mr Prue:** My question to you would be, is it your proposal that we put back into the act what was in the 1998 draft, which included the sphere called health/safety protection and well-being of people and the protection of property? It was written in a way which would have allowed decisions like Hudson.

**Ms Seglins:** That's our request specifically.

**Mr Prue:** That's it specifically? OK, because I didn't see that. The way you wrote it, it's not down there in that same way, but that's precisely what you're looking for?

**Ms Seglins:** That is correct.

**Mr Prue:** The woodlot I think is pretty straightforward. A half-hectare, just for old guys like me, is more than an acre, is it not?

**Ms Seglins:** Just over.

**Mr Prue:** Just over an acre. That's what yours already protects, and this would be a lot of at least two or two and a half acres in size that the act—

**Ms Seglins:** That's correct.

**Mr Prue:** That seems reasonable as well. Thank you.

**Mr Kells:** Let me talk, if I may, about your concern that's right up in front in your summary, particularly in the area of public nuisances. We had this question too down in Hamilton. I don't know whether maybe it's missed in the act—you know, it's a long act and it jumps around.

**Ms Seglins:** All of us find it that way.

**Mr Kells:** OK. Under public nuisances in section 128, it says, "A local municipality may prohibit and regulate with respect to public nuisances, including matters that, in the opinion of council, are or could become or cause public nuisances." This is the second clause: "The opinion of council under this section, if arrived at in good faith, is not subject to review by any court." Then under section 129, "Noise, odour, dust, etc.," "A local municipality may prohibit and regulate with respect to noise, vibration, odour, dust and outdoor illumination, including indoor lighting that can be seen outdoors." We think that's fairly prescriptive.

**Ms Seglins:** It's very prescriptive. The concern is that there are some issues—for instance, in some gravel applications we usually have a stakeholder group of all the residents, as well as the producer, the municipality and the conservation authorities, working together. They will work through an agreement about what's reasonable and they all go to the Ontario Municipal Board with that agreement of all parties. The Ontario Municipal Board will say, "But the legislation says," and would only take out the absolute prescribed issues, not the issues that the entire group had come to conclude were important. That's why we're concerned that it's so prescriptive in these particular areas of jurisdiction.

**Mr Kells:** The question that would come to me from my own question is "not subject to review by any court." I guess the OMB falls somewhere—I'd have to inquire about that with our legal staff. I would have thought that you had it covered; between good faith and what you

describe as what you feel is a public nuisance, that would certainly cover the issue. They can't lug you off to court as long as you do it in good faith. The question which I'll try and get back to you on and back to myself on, of course, is whether the OMB falls under that description of "any court." It well might.

In the pesticides concern, we thought we'd try to come to grips with that by adding "or by any other provincial statute," which means this is a change from the current act. The current act didn't say "any other statute" and therefore the clause is strengthened by its addition in combination with the Pesticides Act, which, as you know, the province already has. We thought the thing is covered under what we already have in there. With what's in the Municipal Act and with what's in the Pesticides Act, it should it cover it off.

**Ms Seglins:** There are many things in the provincial act where it's difficult to expect the level of enforcement that's required. In fact, let's just take the education package that needs to go out with the selling of these products. It's fine to have it all in very small print on the box about how people are supposed to use it, but when the untrained use the product, they don't necessarily follow the fine print on the box. We would like to have more authority to have education programs in the places where products are sold. We would like to be able to host seminars on people being able to train properly, because the province and the federal government do regulate the agricultural community for safe use of the products and they also educate the landscaping companies, but they don't legislate how the public uses the product. They don't have regulations in that area. We think that in a municipality that has this concern we should be able to do so. We're working from that perspective.

**Mr McMeekin:** Your Worship, I really appreciate your comments. I happen to have family who live in your municipality and they tell me you're a straight-up, no-nonsense mayor who serves the people well. Based on what I've heard today, I think that opinion is one based on my family's good judgment. So thank you for being here.

I share your concern specifically about pesticides. There's ample and rapidly growing evidence that the regulatory procedures are not adequate. In fact, Mr Chairman, I would suggest respectfully that this is one area where your government might legitimately challenge the feds saying they're not toeing the line here. I share that concern.

Let me ask directly this question, because I know it's been an issue in Hamilton. Mr Kells was just chatting about it. Were a municipality like the wonderful town of Caledon to take the decision to ban pesticides with respect to cosmetic use, would this act allow that to happen? I think that's your question, isn't it?

**Ms Seglins:** We actually aren't asking for a ban. We're asking for the ability to manage its use within the—

**Mr McMeekin:** To regulate, then, and manage the use. Let me push it a little further. Let's assume a worst-

case scenario. I'm not normally a worst-case scenario person, but having young kids who crawl around lawns and in a neighbourhood where there are lots of cats and dogs who walk through this stuff, assuming your municipality had some good reason to believe that an agent being applied to a lawn was cancer-causing and you wanted to move to regulate against that—

**Ms Seglins:** Or if the risk was enhanced.

**Mr McMeekin:** Right. You would like the authority to be able to regulate that.

**Ms Seglins:** We would like to be able to regulate it, yes. Like proper notice to the neighbours next door, things like that. I don't think that really infringes on anyone's privacy—

**Mr McMeekin:** Your Worship, let me then ask on your behalf, would this act allow Her Worship to put in place the protection she would want and desire for her community? I notice the parliamentary assistant has walked out. Could we undertake to have the staff review that?

**Ms Mushinski:** He walked out for a very good reason.

**Mr McMeekin:** I'm sure he did. I apologize for that. I'm sure he walked out for a very good reason. I'm particularly apologetic because he raised the concern very much in support of Her Worship's comments.

**The Chair:** It would be fair if you'd like to put on the record—

**Mr McMeekin:** It was a frustration that he may be the only one who can answer that.

**The Chair:** If you'd like to put on the record a request that the ministry report back to you and/or Her Worship and all the committee members, I think that's quite proper.

**Mr McMeekin:** I'm sure every committee member here shares this concern.

**Ms Seglins:** I would just say that we haven't banned tobacco products off the shelves, but we certainly do regulate where it can be publicly used.

**Mr McMeekin:** Absolutely.

**The Chair:** The clerk advises me that the next presenter is not here. Ms Mushinski was valiantly trying to get my attention, so if she has a question?

**Ms Mushinski:** Yes. It's just a question regarding the woodlot protection or the woodlands protection. It's my understanding that the reason it is one hectare-plus is because that's defined within the Forestry Act. Do you not feel that the municipality's ability to pass a tree bylaw would protect any woodland or woodlot under one hectare by the lower-tier municipality, if that was so required?

**Ms Seglins:** We do have that kind of bylaw already, and now it won't be enforceable because we won't have that jurisdiction. That's why we're concerned.

**Ms Mushinski:** That's your reading of the act?

**Ms Seglins:** Yes, that's our reading of the act. We can't be more prescriptive than what is allowed. Frankly, we've had this go through all of our public process and have not had any objections. When that is the case, it's a

concern to a municipality that they can't provide the level of protection that the people of the community support.

1700

**Ms Mushinski:** Are you part of a regional government?

**Ms Seglins:** We're a lower-tier municipality within the region of Peel.

**Ms Mushinski:** And you are a representative of the regional government as mayor?

**Ms Seglins:** I'm the mayor of the town of Caledon and I also sit on the region of Peel.

**Ms Mushinski:** You're saying that the woodland protection act that you presently have—

**Ms Seglins:** The bylaw we have.

**Ms Mushinski:** —the bylaw you presently have is for woodlands over half a hectare and that the upper-tier municipality would not be willing to adopt that?

**Ms Seglins:** My understanding, under the Municipal Act, is that the prescriptive authority of that part of the act would not allow us to have a more prescriptive bylaw.

**Ms Mushinski:** I'll check that with the minister.

**The Chair:** Thank you. If there are no further questions, we appear to have reached an impasse.

**Mr McMeekin:** With the indulgence, let me ask one quick rejoinder. The Oak Ridges moraine act has a provision that any municipality can pass any bylaw that would make it more restrictive environmentally than is currently the case. Would that be an option for Her Worship to exercise there, given a significant part of—

**Ms Mushinski:** I thought there was some flexibility.

**Mr Kells:** I don't know if the Oak Ridges moraine act would apply. I'm just picking up from what she said. You're not totally on the moraine anyway, are you?

**Ms Seglins:** About 40% of our municipality is on the moraine.

**Mr Kells:** Yes, that's what I meant. I don't know. I'd have to check that. I have my doubts.

**Mr McMeekin:** The clause is in there, though, Mr Kells, is it not?

**Mr Kells:** Yes, but it's specifically related to the Oak Ridges moraine act. It might be stretching the meaning of the act, I think.

**Ms Seglins:** With all the co-operation we've had between the municipalities and the province recently, it would be really nice to have clear legislation so we're not walking into court challenges and OMB challenges over these types of issues. I think we've really moved to environmental and health protection, and we would like to have some clarity and some control.

**Mr Kells:** We have good staff here, so I'm sure they've recorded that.

**The Chair:** Well, committee—

*Interjection.*

**The Chair:** The only concern I have is that there is a vote expected, I believe, at 5:50.

*Interjection.*

**The Chair:** My concern, Mr Prue, is that if it was at all possible to have a group end by 5:50 and then we

could return—oh, speak of the devil. We ragged the puck long enough.

## ONTARIO RESTAURANT, HOTEL AND MOTEL ASSOCIATION

**The Chair:** We will ask Mr Mundell to immediately approach the witness table. Due to the efficient way in which Queen's Park operates here in a non-partisan committee setting, we're ready for your presentation already and we welcome you to the committee.

**Mr Terry Mundell:** Thank you very much, Mr Chairman, members of the committee. It's always efficient here at Queen's Park, as I've known for some time now.

My name is Terry Mundell and I'm the president and CEO of the Ontario Restaurant, Hotel and Motel Association. With me today is my colleague, Marc Sharrett, a government relations adviser with the association. I want to thank you and the committee for the opportunity to be here today and to participate in these important committee hearings on Bill 111, the new Municipal Act.

The ORHMA is Canada's largest provincial hospitality industry association, representing restaurants, hotels, motels, caterers, golf courses and resorts, simply to name a few.

Allow me to first take a moment to put into context the importance of the hospitality industry to the provincial economy. Ontario's hospitality industry is one of the most dynamic and important sectors of the economy, generating \$18.32 billion in annual sales and 4.3% of Ontario's GDP. With over 22,000 foodservice establishments and almost 3,000 accommodation properties across the province, the hospitality industry directly employs over 411,000 people, representing 7% of total provincial employment. The contribution made by this sector is felt in all geographic areas of the province and affects the livelihood of many residents.

The ORHMA is pleased that the government is acting to modernize the current Municipal Act and we have welcomed the opportunity to participate in a number of consultation sessions in the lead up to the introduction of this legislation.

It's important to note that the hospitality industry is one of the most regulated industries in Ontario. For example, our members are required to comply with the building code, the fire code, Alcohol and Gaming Commission legislation, public health regulations, the Innkeepers Act, zoning bylaws and environmental regulations, to simply name a few. As such, we are interested in this legislation before you today, as it has the potential to lead to a proliferation of unnecessary red tape for the business community.

The act, as it is presently proposed, has clearly defined 10 spheres of municipal interest. Giving municipalities clear authority to deal with these 10 specific areas of jurisdiction should allow local governments to respond more effectively to the challenges that emerge. However, the association recommends that the government must

recognize in Bill 111 that when there is a defined provincial interest, a defined interest established by provincial statute, municipalities must be precluded from passing licensing bylaws that interfere with the provincial interest or are outside the 10 specific municipal spheres of jurisdiction.

Allow me to use two examples to illustrate how this impacts the hospitality industry.

Public health requirements for food premises are set out in the Health Protection and Promotion Act and the accompanying food premises regulation. These public health standards are to be consistently applied toward all food premises. This consistency is important, as it is essential to maintain public health and consumer confidence across the province. The ORHMA supports these regulations and recommends that municipalities not be able to establish new standards by applying conditions to licences that deviate from the clearly stated provincial interest in public health as defined by provincial statute.

This concern regarding a conflict between a stated provincial interest and municipal licensing can be further illustrated by the fact that accommodation properties, presently regulated by provincial legislation, the Innkeepers Act, should not be subject to municipal licensing bylaws.

The ORHMA therefore recommends including a provision in Bill 111 that precludes municipalities from adopting licensing bylaws that interfere with an already recognized provincial interest, established by statute. That is particularly important for businesses that operate in multiple jurisdictions, as it allows them to put proper procedures in place and train employees effectively to comply with important provincial requirements.

Further, the ORHMA does not support allowing municipalities to pass licensing bylaws that stray outside the 10 specific spheres of municipal jurisdiction. There is a danger in the proposed legislation that the three conditions under which a municipality can license, being nuisance control, health and safety and consumer protection, could be used by municipalities to justify licences or place conditions on licences well beyond their stated authority. Therefore, it is essential that a clear delineation be made in Bill 111 between municipal and provincial responsibilities; otherwise, there is an opportunity that municipalities could pass licensing bylaws that, using the three aforementioned categories, interfere with provincial interests. As a result, the association recommends clearly limiting the scope of the three licensing categories to the 10 spheres of municipal jurisdiction in order to ensure accountability, clarity and transparency for taxpayers, consumers and the business community.

The ORHMA is also concerned about the question of user fees. The association has consistently expressed the concern of its members about the application of user fees for municipal services, especially as the commercial sector continues to pay a disproportionately higher share of property taxes.

The ORHMA holds that any cross-subsidization between property tax classes through user fees is unacceptable

for business taxpayers that already pay a much higher share of municipal property taxes. In fact, if the problem is left unresolved, it could lead to double-dipping on the part of municipalities, which is totally unacceptable to members of our association. These matters need to be dealt with in this legislation in order to ensure transparency and accountability for all taxpayers.

On the issue of municipal corporations, the ORHMA believes that giving municipalities the opportunity to create corporations is a good opportunity to effectively outsource and partner with the private sector. But it is important that these municipal corporations are not be given any preferential treatment and should be required to follow the same rules and regulations as any private sector corporation.

Finally, with regard to municipal financing, it is clear that innovative and flexible financing arrangements need to be allowed so that municipalities can deliver the many essential services required today in Ontario. Nonetheless, it is important that guidelines be put in place surrounding financial arrangements so that debt levels stay within reasonable bounds.

**1710**

In conclusion, ensuring there is a clear separation of roles and responsibilities between municipalities and the province will be key to ensuring a positive business environment in the future. We believe the 10 spheres of municipal influence, if they are adhered to without infringing on provincial interests, will go a long way to providing our industry with the climate it needs to ensure growth and job creation throughout the province.

Thank you for your time today. I'd be happy to answer any questions you may have in regard to our submission.

**The Chair:** Thank you very much. That affords us just over three minutes per caucus. The rotation this time will start with the government.

**Mr Kells:** I've been chatting with staff, Mr Mundell, and I need a little clarification from you, if we could. It's in relation to the Innkeepers Act and your concern that—I just wonder how this works. If you're covered under the Innkeepers Act, you should not be subject to municipal licensing bylaws? I've got the act here and I'm not quite sure. Could you amplify what you mean there?

**Mr Mundell:** It's my understanding, Mr Kells, that right now the accommodation industry is regulated by the Innkeepers Act and under that Innkeepers Act, which is provincial legislation, hotels or accommodation properties aren't subject to municipal licensing bylaws. We're looking for that to continue in that same format.

**Mr Kells:** That's what I thought it said. Leave us to take another go-through of the Innkeepers Act and we'll be happy to respond to you later on. As they say in showbiz, we'll take it under advisement.

**Mr Mundell:** Thank you very much, Mr Kells.

**Mr McMeekin:** Mr Mundell, in my municipality, the new city of Hamilton, there's a real concern from the restaurateurs and others in associated businesses around the municipalities regulating in the area of second-hand smoke. That's one area where there appears to be some

very specific empowerment of municipalities to regulate, yet the thrust of your presentation was very much, let's not mix municipal regulatory authority with what's more properly in the provincial purview. I had a number of restaurateurs suggest to me that they would be quite willing to see severe restrictions placed on second-hand smoke as long as the rules were the same for everybody, no setting up a competitive situation where they're, say, more lax in Burlington than they are in Hamilton or more restrictive in Grimsby than they are in Brantford. Would you have any comment on that? Would that be an area where you'd like to see a level playing field on a province-wide basis, the issue of second-hand smoke and its impact on public health?

**Mr Mundell:** Thank you very much for the question. I don't think there is any doubt that the issue of second-hand smoke and smoking control bylaws across Ontario have caused some difficulties for the hospitality industry. There is no doubt from your question, Mr McMeekin, that there is a competitive advantage or disadvantage, if you can, as varying municipalities across the province put forward differing types of bylaws, and that has caused significant concern. I don't think there's any doubt that our industry would be quite interested in looking at, if there is a set of provincial rules, a provincial standard for second-hand smoke and what that is. We would be very interested to entertain and be involved in those discussions. For sure, it is a concern for the industry.

**Mr McMeekin:** I appreciate that. Mr Chairman, you may recall I made a statement in the House with respect not so much to the health issue, although that's very serious, but with respect to this issue from a business perspective, the need for a level playing field. I thank you for your answer. I think we should take that under advisement and see what action, if any, your government might want to take with respect to levelling that playing field across the province.

**Mr Prue:** I've got a couple of questions, but I have one obvious question, with our limited time. AMO, when they were here, were very clear that they—and I'll read you what they've written. "First, that the three categories for licensing powers in subsection 150(2) of the bill be clarified to cover all of those situations for which municipalities presently and legitimately license. For example, many municipalities license transient traders, which may benefit the consumer, but are not fair to local businesses that pay taxes and participate in the life of a community." I think particularly of transient food traders, hotdog stands, ice cream trucks, fish and chip things, in front of restaurants you represent. You are asking that it not be expanded beyond the three. Are you clear that you understand that restaurateurs would not be protected from these groups under this legislation?

**Mr Mundell:** No, sir. In fact, it was my understanding that under the 10 spheres of jurisdiction, municipalities would have the ability to regulate those particular groups, and we would continue to support that.

**Mr Prue:** But this is not included under the licensing provision.

**Mr Mundell:** We would support that those groups still be able to be licensed by the municipal sector, yes indeed.

**Mr Prue:** That runs contrary to what you came here to say today, then.

**Mr Mundell:** In terms of the 10 spheres of jurisdiction, we're supportive of them. My understanding was that those issues were already within the parameters of those 10 spheres. We are saying, though, that we want to ensure that there is clarity between what is clearly a provincial responsibility and what is a municipal responsibility. The business community would then know in fact to whom we can go, whom we hold accountable and what the rules of the game are.

It would be very difficult for us to operate food premises with 37 different types of food handler training, for example, across the province. That's the issue we see as more difficult. Quite frankly, food handler training is a good idea province-wide, something we support, but we'd rather have one system for it versus 37 from 37 different public health units, for example.

**Mr Prue:** I just want to be clear so the members opposite can hear this, that you are in favour of licensing transient traders in foodstuffs.

**Mr Mundell:** Yes.

**Mr Kells:** I was just going to say to the honourable member that under the Municipal Act, municipalities have the ability to control and impose conditions on occupying or locating on a public highway, including sidewalks.

**Mr Prue:** But not to license.

**Mr Kells:** Are you sure?

**Mr Prue:** If you look at the licensing, you tell me. You read it. I've read it a hundred times.

**Mr Kells:** If it's a hole, we'll plug it up.

**Mr Prue:** OK.

**The Chair:** Have you any further comments, Mr Kells?

**Mr Kells:** No, I've taken that one under consideration.

**The Chair:** Thank you, Mr Mundell. We appreciate your coming before us here today.

#### GREATER TORONTO HOTEL ASSOCIATION

**The Chair:** That would lead us to our next presentation, the Greater Toronto Hotel Association. Good afternoon. Welcome to the committee.

**Mr Rod Seiling:** Thank you. It's good to be here. My name's Rod Seiling. I'm president of the Greater Toronto Hotel Association. I want to thank you and your committee for the opportunity to appear before you today on Bill 111, An Act to revise the Municipal Act.

The Greater Toronto Hotel Association is the voice of Toronto's hotel industry, representing approximately 135 hotels with over 33,000 guest rooms and more than 30,000 employees. I won't bore you with the rest of that paragraph.

We are very aware of the long and involved process that has led to the introduction of this legislation. The GTHA participated in some of those previous consultations, so we know of the difficulties that preceded the debut of Bill 111.

Our concerns are very specific. We are generally supportive of Bill 111. Our concerns relate to clarifications, and I might add some general comments. Some of them are to be dealt with by way of regulation, but they are of sufficient concern that we strongly suggest some need to be addressed in the act so there's no question after the fact as to what was meant or understood.

Municipal business licensing: this was one of the areas that was of most concern to the private sector. The issue is a concern, a valid one, based on past statements attributed to some municipal representatives, that municipalities would use the licensing proviso as a de facto income tax, that is, as a means to raise new revenues. We are pleased to see that the cost of a licence is to be limited to associated administration and enforcements costs of the licence.

With respect to what a municipality can license, we agree there needs to be a clearer focus on what a municipality can license, reducing duplication of licensing between multiple municipalities and the province, ensuring transparency in the decision-making process and providing opportunity for public participation. Therefore, we support the requirement that a municipality must notify the public in advance when it wants to establish a bylaw, change fees or the classes of businesses to be licensed.

The current proposals include exemptions for certain businesses that are to be continued. Hotels, for example, currently enjoy such an exemption, as they are already licensed by the province under the Innkeepers Act. We suggest that changes be made to clearly detail these exemptions. We do not require, from a cost standpoint or a red tape standpoint, another licence to operate. The issue, as we have clearly had it demonstrated, is not one of added protection for the consumer but one of control.

1720

We would also suggest, in a similar vein, that clarification is required that where there is a provincial interest already in existence, a municipality cannot similarly regulate. If the matter, such as the province's Health Protection and Promotion Act, is of such importance, then it should apply province-wide. For businesses that operate in multi-municipal jurisdictions, this makes doing business more difficult.

We would also like to express our concern over the three areas that the act specifically allows municipalities to license: health and safety, consumer protection, and nuisance control. We recognize that they are better defined than in the old act but suggest that clarification on the scope of those powers be defined in advance.

User fees: the new act is somewhat mute on this very important issue. We recognize the difficulty inherent in the whole issue but remain very concerned over the expressed intent of some municipal politicians to use this

tool to raise more money. Bill 26, the omnibus legislation, scoped out the parameters to some extent as they relate to user fees. Our objection to user fees is not to the concept, as we support them in principle. The problem has been and continues to be the attempt to circumvent the intent of imposing a fair charge for a required service. Transparency and public participation are well-meaning. However, when it comes to a municipal council deciding whether to try and extract more from the business sector, as opposed to collecting its fair share from residents, we have witnessed too many times the outcome.

We recognize the difficulty in adding more control and fairness within the framework of the legislation. We do suggest that more thought is required leading up to the regulations phase.

Appeal process: we remain concerned that the legislation does not contain an appeal process. Neither businesses nor individuals should have to advance directly to court if a dispute arises over the equity or fairness of a fee or charge. We do believe the Ontario Municipal Board could be charged to hear disputes in these specific areas.

Municipal financing: we recognize that for large urban centres especially, the ability for creative financing is important. What we think is a logical question is the identification of what level of debt a municipality can incur. We do not believe it is the intent of this legislation to allow municipalities to overextend themselves. We are not suggesting what the limits should be, but there should, we suggest, be some guidelines as to what type of financing is prudent and the level of debt versus the reasonable ability to repay.

Municipal corporations: we support the concept of allowing municipalities the right to form corporations. We see this as an opening for municipalities to operate more effectively and efficiently by way of outsourcing and partnering with the private sector. It is difficult to comment more, as the conditions and purposes for which corporations will be permitted are to be set out in the regulations. We are concerned that these corporations not be provided an unfair competitive advantage. For example, they should be taxable if they are competing with the private sector and have to comply with the same regulatory structure. In the spirit of transparency, these corporations should be audited and the results become public information. It is clear that there is more work required in these last two areas.

We commend the minister and the government for moving forward. It is in the detail that we will see the results of much of the work to date. It is for this reason that we urge you to clarify in advance the issues we have raised here today. We believe it will facilitate a better end product for all the stakeholders emanating from the regulatory process. Thank you.

**The Chair:** Thank you very much. That affords us approximately four minutes per caucus for questions. This time, the rotation will start with Mr Prue.

**Mr Prue:** I actually don't have any questions. Thank you.

**Mr Kells:** We're back to the one we had from the previous presenter. Mr Seiling, you mentioned the old Innkeepers Act and the fact that you're licensed under the act. We're still trying to find that in that act. I'm sure we will before the week is out.

**Mr Seiling:** We're controlled and have to operate under the auspices of the Innkeepers Act. There is already legislation in existence under which we have to operate as a business.

**Mr Kells:** We have it with us. We're having a little trouble. Maybe on the way out the door, you might drop into this little office we have here to the right and show us where that is under that Innkeepers Act.

**Mr Seiling:** I don't have it with me, but I can get it to you tomorrow.

**Mr Kells:** We have the act, but if you could—tomorrow is fine.

**Mr Seiling:** OK. I can get you a copy of the act; it's not a problem.

**Mr Kells:** We don't really, again from the government's point of view, have any questions. I was busy trying to understand the innkeepers part of it.

**Mr Seiling:** I can tell you, it is an old piece of legislation. It refers to where you have to tie your horses. It predates most of us.

**Mr Kells:** You probably have the 149-year-old version. Actually, Mr Prue, when we chatted about the licensing of hotdog vendors etc, we believe that where we give the municipalities the authority to control the sidewalks and highways, one way they control a sidewalk is under licensing. If they refuse to give the licence, then they can't do that.

**Mr Prue:** My reading of that issue of control is that you say, "You cannot sell hotdogs on this location," or, "You can sell," in which case you'll have hotdog carts running in there that don't require a licence.

**Mr Kells:** Then you impose your control over the sidewalk, so if they're not licensed, they shouldn't be on there. Doesn't that cover it? I'm not a lawyer, but it would seem to me that if you aren't licensed, then you're not licensed.

**Ms Mushinski:** We have the right to enforce it.

**Mr Kells:** We trust you municipalities. We have great faith.

**Mr Prue:** I know, but if you're not willing to license them, then there's no way to control them.

**Ms Mushinski:** Sure there is.

**Mr Kells:** You can control them by not licensing them. They don't exist if they're not licensed. That would be the way I'd read it. That's the best I can do right now, anyway. Those are my questions.

**Mr McMeekin:** You trust municipalities except when it comes to amalgamation.

**The Chair:** You can blame me for that.

**Mr McMeekin:** Yes, I can and I have, but I'm trying to be very friendly here.

You're not the only one here, Mr Seiling, who's adroit at stickhandling. I'm a big fan, by the way.

**Mr Seiling:** Thank you.

**Mr McMeekin:** I appreciate the points you made. Frankly, I'm fundamentally in concurrence with virtually most of what you've said. But because you're here and because second-hand smoke has been such an issue in my community, and because we just heard—you may or may not have caught it. The Ontario Restaurant Hotel and Motel Association were here just ahead. When I referenced the numerous complaints I'm getting from restaurant and hotel people that they don't much care what the bylaw is, as long as it's applicable across the board—that there's a level playing field and they don't want to be penalized. Would you comment on that for me? Would you like to see a level ice surface here that would treat everybody in the province equally and fairly with respect to the—

**Mr Seiling:** I'd like to see a level playing field, not just within the province. I think we have to be cognizant, from a tourism perspective, of where our business comes from and what those customers expect when they come here. Over 62% of our customers in the greater Toronto area come from outside this country. What they can't do in those countries and what they expect to do when they get here aren't necessarily one and the same.

I certainly respect the health side of the argument. I don't want to get into they whys and the wherefores argument today of whether it's initial smoke, second-hand smoke; that's an argument for another day. Certainly something that's province-wide has some merits, but I'm more concerned that our legislation here be cognizant of what we have to do to compete for business across the breadth of the globe.

**Mr McMeekin:** We have some Canadians who feel that way, and they choose to go to California, which is restrictive.

**Mr Seiling:** They also have a patio they can use year-round as well. I don't think that today is exactly—

**Mr McMeekin:** Maybe that's the cause of the hydro shortage there. I don't know. Listen, I appreciate your—

**Mr Seiling:** I understand your comment.

**Mr McMeekin:** I think you raise a good point about the sensitivity to visitors. That's something that is so obvious that sometimes we miss it. Thank you for that.

**The Chair:** Thank you for coming before us and making your presentation.

**Mr Seiling:** Thanks for the opportunity to be here.

**The Chair:** With that, committee, apparently the next presenter, who will be reaching us via video conference, has not as yet arrived in Ottawa. So in the interest of the productivity of the members, the committee stands recessed until 6:05 or immediately after the vote, whichever comes sooner.

I call the committee back to order for one second, just to dispose of one outstanding issue while we have a representative of each party here. The question has arisen of when we should allow the amendments, the deadline for the amendments to this bill. As you may recall, the deadline for the receipt of any written submissions is Monday afternoon. I'm going to suggest that perhaps noon on Tuesday might be appropriate.

**Mr Kells:** We have a little problem. The minister has been indisposed with an operation, so we need just a little time to get to him. That's why the Tuesday at noon would be better for us.

**Ms Mushinski:** When is clause-by-clause?

**The Chair:** Wednesday.

**Mr Kells:** I believe we're talking about amendments too, are we not?

**The Chair:** Yes, that's what I'm saying, the receipt of amendments.

**Mr McMeekin:** You need to get the amendments before you do clause-by-clause.

**Mr Kells:** We realize it's tight, but we have a problem.

**Mr Prue:** I have to start getting used to how things go at lightning speed here, but that seems to be really unbelievable.

**The Chair:** I would remind you, Mr Prue, though, that we are operating under an order of the House that tells us we have to do the clause-by-clause on Wednesday. I'm working backwards from that and suggesting that rather than 5 pm, which would be the normal protocol, we'll give your caucus another five hours to be able to digest any amendments that might be received from the other two parties, and offer a similar opportunity to the Liberals and the government members as well.

**Mr Prue:** So Wednesday at 9 o'clock, we're going to meet for clause-by-clause?

**The Chair:** Actually, 10 o'clock. We will start debate at 10, then we will resume at 3:30, and all questions are deemed to be put at 4 o'clock.

**Mr Kells:** I don't see any reason why we couldn't give you what we have. We're just asking for an extension for the cut-off. If you want, check it out with your House leader.

**Ms Mushinski:** It would be done in response to all of your concerns, of course.

**Mr Kells:** Michael, talk to your whip or whoever you want to talk with and tell us later on.

**The Chair:** There seems to be a consensus. Is it the wish of the committee that any amendments—

**Mr Kells:** I believe they're taking it under advisement for a short period of time.

**Mr Prue:** Until 6:15. After we finish and I have consulted, I'll come back.

**The Chair:** Fair enough. We will resolve that matter after we return from the vote. The committee stands recessed again.

*The committee recessed from 1733 to 1807.*

#### CAA NORTH AND EAST ONTARIO

**The Acting Chair (Ms Marilyn Mushinski):** We'll call the meeting to order. This is a continuation of the standing committee on general government to consider Bill 111, An Act to revise the Municipal Act and to amend or repeal other acts in relation to municipalities. We are joined by a videoconference from Ottawa by Mr Doug Mayhew, manager of public relations for CAA

North and East Ontario. Good evening, Mr Mayhew. Can you hear me?

**Mr Doug Mayhew:** Very clearly, thank you.

**The Acting Chair:** Mr Mayhew, you have up to 20 minutes to make your presentation.

**Mr Mayhew:** It will be less than half of that, Madam Chair. It is the supper hour and I'm sure we have other things we could be doing. I'd like to thank you for the opportunity, particularly to thank the staff of the committee for the efforts and the communication they put into my being here tonight. It was quite commendable.

CAA North and East Ontario is one of five independent CAA affiliates in our province and it's one of 11 in Canada. We are not-for-profit auto clubs which share the CAA banner and logo.

The club I represent, from eastern and northern Ontario, starts geographically just south of Ottawa and goes all the way to Manitoba, which is a huge geographic part of our province. If Mr Miller's in the room—I don't see him, but you're very blurry—it goes as far as the northern part of his riding.

We have 210,000 members at CAA North and East Ontario. You're probably aware, from earlier this week, that there are nearly 1.8 million members in Ontario itself. That translates into one out of every four drivers having a CAA card in their wallet or purse. We know a great deal about the attitudes of these members. It is their attitudes and their expectations that have brought me here tonight. Specifically, we know that the majority of them really don't like the idea or the reality of toll roads. For more than 90 years, CAA has been bringing the concerns and thoughts of its members to various elected bodies in the country, in provinces and even in municipalities.

When your legislative predecessors designed the original Bill 149 years ago, they could never possibly have fathomed the automobile, let alone this measure of consultation. Regardless of that, however, they wrote an act that lived long, prospered and, arguably, met the needs of the province until very recently. They somehow brought their ideas into a context and defined their thoughts in a very close-to-timeless manner. Their intents were clear. Madam Chair, I wish you and your colleagues the same.

Obviously, there's something in this bill that I don't like, or, as I said, we'd be having dinner. Of the 323 pages that I have very quickly perused—I haven't read them all—there's one section that I think needs exploration and hopefully some address. It is section 40. That's the section that gives municipalities the right to place tolls on roadways. It's indeed a small part of this bill, but for our members and for CAA North and East Ontario, it's an important part. We see roads as benefiting all of us. We see roads as being open to all of us and accessible by all of us.

We do accept, however, that roads cost money, and therein lies the rub. However, our members believe they've already paid for them. They pay taxes on vehicle purchases, leases and repairs, they pay permits and licensing fees, and then they pay gas taxes. I don't think

who owns and manages a roadway with respect to taxation matters to a motorist. Oh, and by the way, they pay municipal taxes too.

The current and somewhat time-locked issue of the moment—downloading—can not be accepted as a clear-cut reason to give municipalities the right to toll a road. In the current flavour of the decade—and it's a very powerful one—public-private partnerships, are a reflection of this moment in our time. The bill you're working on at the moment is going to outlast these issues. What will the next flavour of the moment be? I don't know, but this piece of legislation has got to live beyond that.

I can't look at the issues of today without acknowledging that none of us know where we're going tomorrow. Giving municipalities the right to toll roadways subject only to regulatory supervision is a whole world of potential problems written in a calendar of time, I believe.

We need greater security written into the bill itself. True, regulations are great. They're certainly not constraint and they sometimes, through time, can be license. They're easily changed. I don't think just leaving this in the hands of a regulatory process is enough. Those whom we elect who represent us may or may not be part of ongoing regulation. We're being asked to trust that the regulators of the future will be reasonable, workable and clearly out to meet the needs of the provinces and municipalities. We're being asked to believe that the future regulations will indeed reflect the intent of this committee and probably this House.

My crystal ball isn't clouded by cynicism, lack of trust or good faith. I'm fairly clear on what I believe this bill is intended to achieve. It is clouded, however, with the knowledge that those who follow you may use the regulatory process to achieve goals at the expense of the motorist, and you must weigh that risk. The whims, tides and influences that can affect the process of making regulations are real and important. You well know them; you see them every day. The sensitivities allow regulations to move forward. Actually, they often allow it to move forward in ways that acts would not have even permitted. This is sometimes a good thing.

However, this is a regulation concerning tax. Road toll is a tax and I think it needs the strength of being written clearly into the bill itself. Leaving the actual management of a tolling situation open to the regulatory process is leaving the whole matter of municipal toll roads open to abuse, probably abuse that was never intended. Those with the will and the skills can remedy this by adding strength to the bill. This act will protect our citizens.

The people who put this remarkable effort of design together deserve more than this. Their efforts deserve your review and consultation to place clear language. If toll roads in our municipalities are a necessity because of fiscal need—that is a huge issue and it's not an issue for tonight—and the issue of user-pay moving into society again is one of those moments in time, or a decade at the most, I hope, municipalities could easily use tolls as simply a huge revenue stream, because they're hurting. I know they are and you hear that they are as well.

I have a great fear that municipalities could use tolls as restrictive devices to limit the freedom of choices of their citizens. That's simply repugnant and violates principles that we currently hold dear.

Tolls for new construction may indeed be viewed as a necessity, however. I'm enough of a realist to know that with sufficient constraint there could be opportunities for that. If you accept that roads are not highways of economic development, and if you believe that roads do not fuel growth, then tolls probably make a lot of sense to you. Will municipalities view it this way? I can't say.

It doesn't take a lot of imagination to see a bit into the future. Tolls, just another tax, need very public review. Your committee can guarantee that any planned toll activity is 100% open to public scrutiny, and the provision of the word "may" in the opening line of the regulations is not enough. This bill must clearly state that the municipality must be publicly open in any potential tolling situation, and since this right is really provincial in nature to start with, each and every toll situation has to be reviewed by a provincial Parliament. If that seems onerous, it's only because all decent guarantees are onerous. If a municipality is right and justified in tolling a roadway, then a public consultation process should be easy. If the Legislature is sound in allowing this right to be given to municipalities, then reviews in the House would be simple.

Don't leave this to regulation. Make it hands-on in the act: clear, concise and reflecting what I honestly believe is the intent of the Legislature. Every member of your committee knows full well how accountable you each are. Celebrate that accountability and make certain that those who follow you into the Legislature are just as open and just as accountable.

David Leonhardt of CAA Ontario had the privilege of addressing you earlier this week in Hamilton and perhaps today in Toronto, I'm not certain. But I do echo his early suggestion that if you must allow municipalities to toll roads, then this right can only extend to new lane construction. I've already spoken, as Mr Leonhardt did, on the legislated necessity for public process review.

I wish you and your committee well, Madam Chair. By weight alone, this is a major document, and by the history of its predecessor, you might be making history that's going to last six or so generations yourself. On behalf of my members, thank you.

**The Acting Chair:** Thank you very much, Mr Mayhew. We have about six minutes for questions. By the way, would it be possible for you to fax your presentation to our clerk? It would help Hansard if you could do that.

**Mr Mayhew:** I certainly would be pleased to. I was not able to this afternoon. I'll do it tomorrow morning.

**Mr Kells:** I appreciate the presentation. It was well written and well presented and certainly on topic, being the topic of tolls.

These are not necessarily questions, but a little clarification is in order because of your concerns. The whole tolling issue surrounding the Municipal Act is very

much a work in progress. In other words, even though the act is moving on, the position on tolls is something we're still working on. Let me just run through these points if I may.

It is being proposed that the regulation contain provisions that require that tolls be applied only after they have met a prescribed set of conditions and only where new or conspicuously expanded highway capacity has been created. Municipalities will not be able to designate, operate or maintain a toll road until this regulation is made. The conditions and requirements would also be consistent with the impending report undertaken by the Ministry of Transportation and SuperBuild on provincial tolling policy. So the regulation can't evolve until the policy, in a bigger framework, is brought down by this government. The government would also retain the authority, by regulation, to prohibit municipal tolling of roads where deemed necessary.

I understand your concerns about regulation, that regulations can be changed, but that's always been the case with governments, and acts can also be amended or changed. The final arbitrator in all of this is the public. Any government—and we just happen to be the government of the day today—is always subject to the voters' wrath. That applies to municipal council. It also applies to the government that has the power under regulation either to let them proceed with the rules we're about to set up, or we have the power, if we deem it necessary, to prohibit them from proceeding. So the province is not ducking the issue, but it is going to allow the municipalities, under a set of conditions which will be part of the provincial government policy, to look at tolling.

I don't know if that begs any questions from you, sir, but those are the points I'd like to make.

**Mr Mayhew:** Thank you very much. I'd just like to let Mr Kells know that I was unaware of the first items you read me. They're not in my copy, and I thank you for bringing them to my attention.

**The Acting Chair:** Any further questions from government members? If not, we'll turn to Mr Prue.

**Mr Prue:** I think my question is very simple. I thank you for your presentation. It was very similar to one by the CAA that we heard in Hamilton a couple of days ago, and it's right on point.

If someone were to move an amendment that said the only roads that could be considered would be either new roads or newly acquired roads, would that assuage some

of your fears? The reason I'm saying "newly acquired" is because some municipalities, if they're downloaded roads in poor condition, may want to find the necessary funds to fix them up in the short term and then open them up again. Would that assuage it?

**Mr Mayhew:** Yes, it would move well in the direction, particularly the first part, new construction. I think I could go with that to some extent. Major reconstruction perhaps, but new construction—I can see some movement in that direction with the right kind of constraints.

**Mr Prue:** That would be my only question.

**The Acting Chair:** Thank you very much, Mr Mayhew, for joining us this evening.

**Mr Mayhew:** Good night, Madam Chair, and thank you.

**The Acting Chair:** Good night.

Committee members, before you go, I think there was the outstanding matter of the deadline for receiving amendments. Mr Prue, you were going to take that to your House leader.

**Mr Prue:** Yes, I have talked to the House leader. The House leader has come up with I think a perfectly reasonable suggestion that we agree that any amendments should be received by 12 o'clock.

**The Acting Chair:** Should, shall or may?

**Mr Prue:** Should. We will endeavour to do our very best to ensure that they're there by 12, but you're literally giving a very small caucus three working hours to put together the amendments after the closure of the time for documents to come in. We still have to research them. We'd only have a morning, between 9 o'clock and 12, to put all the amendments together. We will do our very best, but I don't want the committee to say that you're not going to take them if it takes us until 2 or 3 in the afternoon to actually accomplish it. So we agree to—

**Mr Kells:** You're accommodating us, so we'll accommodate you.

**Mr Prue:** We're using the word "should," and we shall endeavour our best to get them in by noon.

**The Acting Chair:** That's fine. Ultimately, because this is under time allocation anyway, it will be the ruling of the Chair, I believe, in determining the deadline. But we'll certainly take your input, Mr Prue, and try to stick to 12 o'clock as closely as possible.

**Mr Prue:** We'll do our best.

**The Acting Chair:** Fine. Thank you, Mr Prue. So we adjourn.

*The committee adjourned at 1823.*





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Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot L)

### **Clerk pro tem / Greffier par intérim**

Mr Douglas Arnott

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ISSN 1180-5218

## **Legislative Assembly of Ontario**

Second Session, 37<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Deuxième session, 37<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

**Monday 26 November 2001**

# **Journal des débats (Hansard)**

**Lundi 26 novembre 2001**

**Standing committee on  
general government**

**Waste Diversion Act, 2001**

**Comité permanent des  
affaires gouvernementales**

**Loi de 2001 sur le  
réacheminement des déchets**

Chair: Steve Gilchrist  
Clerk: Anne Stokes

Président : Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 26 November 2001

Lundi 26 novembre 2001

*The committee met at 1551 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Steve Gilchrist):** I call the committee to order. The first order of business shall be the adoption of the subcommittee report relating to Bill 110.

**Mr Dave Levac (Brant):** "Standing committee on general government, subcommittee on committee business:

"Proposed matters for discussion re committee consideration of Bill 110, An Act to promote quality in the classroom:

"Re Bill 110:

"(1) That, pursuant to the time allocation order of the House dated Monday, November 19, 2001, the committee meet for public hearings on Bill 110 on Monday, December 3, 2001, and for clause-by-clause consideration of the bill on Wednesday, December 5, 2001.

"(2) That the clerk place an advertisement on the Ontario parliamentary channel and on the Internet. Additionally, notice will be provided to provincial newspapers by press release. The deadline for such is by 4 pm Friday, November 30." Is that, at that point, for written submissions?

**The Chair:** Might I suggest that the wording be, "The deadline for witness requests."

**Mr Levac:** "That the deadline for witness requests be by 4 pm Friday, November 30."

"Written submissions"—does a written submission follow in the same spot?

**The Chair:** You could call it number 10, if you like, the deadline for written submissions.

**Mr Levac:** "(3) That groups be offered 15 minutes in which to make their presentations, and individuals be offered 10 minutes in which to make their presentations.

"(4) That the Chair, in consultation with the clerk, make all decisions with respect to scheduling.

"(5) That each party provide the clerk of the committee with their prioritized list of potential witnesses, together with complete contact information, to be invited to appear at the committee's hearings by no later than 5 pm on Thursday, November 29, 2001.

"(6) That the subcommittee determine whether reasonable requests by witnesses to have their travel expenses paid will be granted.

"(7) That there be no opening statements.

"(8) That the research officer prepare a summary of recommendations.

"(9) That the Chair, in consultation with the clerk, make any other decisions necessary with respect to the committee's consideration of the bill.

"(10) That the deadline for written submissions be Monday, December 3, 2001, at 5 pm."

**The Chair:** Any further discussion? Seeing none, I'll put the question. All those in favour of the adoption of the subcommittee report? Carried.

## WASTE DIVERSION ACT, 2001

LOI DE 2001 SUR LE  
RÉACHEMINEMENT DES DÉCHETS

Consideration of Bill 90, An Act to promote the reduction, reuse and recycling of waste / Projet de loi 90, Loi visant à promouvoir la réduction, la réutilisation et le recyclage des déchets.

**The Chair:** That takes us back to number 2 on the agenda, clause-by-clause consideration of Bill 90. We left off at what in your list of amendments was noted as page 12, subsection 24(2). That would be an NDP motion.

**Ms Marilyn Churley (Toronto-Danforth):** Had I read this one into the record already and had we begun discussion?

**The Chair:** No, you had not.

**Ms Churley:** I move that subsection 24(2) of the bill be amended by striking out the portion before paragraph 1 and substituting the following:

"Same

"(2) A waste diversion program developed under this act for a designated waste shall not include any of the following:"

**The Chair:** Do you wish to speak to the amendment?

**Ms Churley:** Yes, I do. Gee, I have this memory of having discussed this in detail. The reason I wanted to change the wording was to make it crystal clear that those issues that are raised—I'm trying to find the page here. Can you tell me what page this is on in the bill itself? Page 8? OK, here we are. It now reads "shall not promote any of the following," and those include "The burning of the designated waste," "The landfilling of the designated waste," "The application of the designated waste to land," and "Any activity prescribed by the regulations."

It's a word change that has some significance, because here in the bill it says "shall not promote any of the following," and my amendment says "shall not include any of the following." This bill, I think in all our minds, is to promote the 3Rs in the order we've decided is the most significant: reduction, number one; reuse, number 2; and recycling, number 3. Of course these listed here should not even be considered as a part of what this new waste management organization should be doing. So I just want to strengthen it and say these "shall not include any of the following," because there are of course opportunities for some to say that any one of these four could be included in the hierarchy of the 3Rs that we're promoting here.

I hope the government members will support me on this amendment.

**The Chair:** Further comment?

**Mr Ted Arnott (Waterloo-Wellington):** Thanks to Ms Churley for her proposed amendment. Unfortunately, I have to indicate that the government is not prepared to support her amendment, and the rationale is as follows.

The proposed act before this committee today promotes the reduction, reuse and recycling of designated wastes, and activities to promote and develop products that can be manufactured from recycled materials. While not prohibiting the burning, landfilling or land application of materials that are diverted under a waste diversion program, the focus of this act is clearly waste reduction, reuse and recycling. There may, however, be instances where these other waste management options may need to form part of the proposal submitted to the minister but are not promoted as the sole purpose of the program. For example, materials that are collected under a household special waste program may not be able to be totally reused or recycled, and energy recovery may be the most beneficial waste management option from an environmental perspective.

For those reasons, the government is not prepared to support your amendment.

**Mr James J. Bradley (St Catharines):** Clearly, if you're talking about waste diversion, the hierarchy we mentioned previously of reduction, reuse and recycling is extremely important. I cannot think that under any circumstances "the burning of the designated waste" would in any way fit any of the 3Rs. It would have fit the old 4Rs of many years ago, but it would not fit the 3Rs. "The landfilling of the designated waste"—again, we want to avoid that circumstance from happening. I think some of us are very suspicious, for instance, that some of the material collected for the purpose of recycling somehow makes its way into a landfill site. We are very concerned that that not happen, and any way we can strengthen that would be useful. "The application of the designated waste to land" again poses some problems, some that may be rectified through other legislation. It does pose problems, and "any activity prescribed by the regulations."

I think the amendment put forward is not a radical amendment. It's a very reasonable amendment. I think it

strengthens rather than weakens that section of the bill, and for the life of me I cannot understand why the government would be opposed to this amendment, although they always have their reasons.

**Mr Frank Mazzilli (London-Fanshawe):** I just wanted to add to the comments of the member from Waterloo-Wellington in that all acts seem to have some leeway. What I can see from the amendment are words like "shall not," which obviously means "shall not," and words like "may," which give some type of discretion. I would suspect, for ministry officials and for enforcement people in the field, words like "may" leave that potential discretion available, and words like "shall not" mean exactly that, no matter what the circumstances are.

So I certainly will be supporting the member from Waterloo-Wellington in giving ministry officials the tools that they need to make the proper decisions.

1600

**Ms Churley:** I just want to point out to people that if you look at the title of the bill, it's An Act to promote the reduction, reuse and recycling of waste. That's pretty clear. That's what this bill is supposed to be all about.

None of those listed here—it says, "shall not promote"—have anything to do with the intent of this bill, even its stated title. I think everybody would agree that to strengthen the intent of the bill, you would make it very clear that these, because they do not fall into that category—that's what I'm trying to say here. It weakens the intent of the bill to not have stronger wording around these particular issues that are raised under that section. So my argument, I think, is quite valid on this one. It really weakens the intent when you see that. I understand what you're trying to say, that that flexibility should be there. I'm saying it shouldn't be there, because if you've got it there, it actually weakens the intent and it destroys some of the integrity of the bill—which, I might add, runs throughout, because a lot of my amendments have not been accepted. I thought this one could be, because it is so straightforward in terms of intent.

**Mr Norm Miller (Parry Sound-Muskoka):** I'd just like to add my support to Mr Arnott's logic in defending the rationale for not supporting this amendment, and Mr Mazzilli's as well, that it takes away the flexibility of this part of the act, and the discretion involved as well. I'd like to offer my support to Mr Arnott on this.

**Ms Churley:** What about my motion?

**Mr Levac:** Not to prolong this, but this is a question for the government side with regard to their rationale. If I ask this question and the answer is that it's a possibility still in existence to do the four things that the member from the NDP is pointing out—maybe I could ask the question this way: by saying "shall not promote," does that mean it still can include?

**Mr Arnott:** Could you repeat the question again? I'm sorry.

**Mr Levac:** If you use the wording "shall not promote," can you then still include the four topics that are being indicated?

**Mr Arnott:** Again, it's my understanding that, as part of the program for waste diversion, there may be other waste management options that may need to form part of the proposal submitted to the minister.

**Mr Levac:** So the rationale for the addition of—

**Mr Arnott:** It would be the most environmentally benign plan.

**Mr Levac:** Right, but that's inside the bill.

Having said that, I guess I'm voicing the concern that Mr Bradley expressed. That is, if there's a prioritization of the 3Rs, and included in that is more flexibility to go away from that, if that's not solid inside the bill, does that preclude us from using the logic that says then it's quite possible for us to start moving away from the 3Rs and moving into these other four areas?

**Mr Arnott:** Keith West is here from the Ministry of the Environment. He may be able to shed some light on this for you, Mr Levac.

**Mr Levac:** I appreciate that. I'm not trying to throw a curve at this. I'm just trying to get a clarification of the rationale for not supporting that.

**Mr Keith West:** My name is Keith West. I'm the director of the waste management policy branch at the Ministry of the Environment. Through you, Mr Chairman, to the member, the intent here is very clearly that the hierarchy is in place; the 3Rs hierarchy is to be the priority to be put in place in terms of the development of any program. But there may be instances, and I'll give you an example, of materials that may be collected from a household for a household special waste program of a municipality, where the material is mixed and, for whatever reason, there's not a reprocessing facility available to reprocess that material to a more beneficial use, which is what we're trying to encourage here. In fact, there may be a need to have another waste management option available under that program, but not to be promoted; it's just there in the event that you have some materials that can't be used on a more-beneficial-use basis. So you could have that option available to you within the program so that any waste that couldn't be reprocessed, and we would hope that that would be the minority within any program, could be sent off to a facility to ensure its proper management. So that's the intent of this.

**Mr Levac:** I can understand that. If you take it to the last step regarding why I went down there, that would be, what incentive, then, would there be to develop the processes that are necessary to prevent those four things from being used, if you allow it to continue?

**Mr West:** The incentive would be in the program development. In fact, the hierarchy was clear that we're looking for reuse and beneficial use of those materials that come into a program, like the household special waste. Paints could be reprocessed into paints, solvents could be reprocessed into solvents for other uses. That would be the intent of using the 3Rs hierarchy in terms of reuse and recycling of those products. But to not allow for other options in the event that reprocessing can't take place would in fact encumber a program from being

approved by the minister, from our perspective. So we think that option needs to be available, but it is not the priority here. We've tried to clarify that in saying it's not to be promoted.

**Mr Levac:** I appreciate the clarification.

**Mr Bradley:** My concern is the possibility that it's perhaps a conspiracy theory.

**Ms Churley:** I wouldn't say that.

**Mr Bradley:** But sometimes conspiracy theories are actually true. That is, I know there are a few people on the government side who are convinced that incineration should indeed be put on the list of 3Rs and made the fourth R; in other words, recovery. What I am concerned about, with the present wording, is that we'll have incineration through the back door. There are people trying to find that little edge to poke incineration in. I think what Ms Churley is worried about as well, among other things listed, is the fact that there are people who are itching to get back into incineration, and this opens the door just a tiny crack to incineration.

**Ms Churley:** Of course, Mr Bradley is correct. With all due respect to him, because I know he in the Liberal Party does not support incineration—I don't know if Mr Levac does not support incineration, but should the Liberals form the next government, I know that Liberal policy in fact supports garbage incineration. I know that the NDP, should we form the next government, have made it very clear that we don't.

It's important wording. Mr Bradley made a good case. There are those who believe that the burning of garbage is viable, as Mr Bradley well knows—I'm sure he's had these arguments in his caucus—that it's a viable option, a way to deal with garbage, although I think more and more people are moving away from that, given what we know now about what's happening in Europe, although Europeans have a much bigger problem because of lack of land mass. They moved much further toward that option over the years than we did. But they are now deciding and discovering that it is a bad option because of the air pollution.

As you know, the better the pollution abatement equipment—and these days it is pretty good, there's no doubt about it, but you still have some dioxins, furans and other heavy metals coming up the stack and spewing around—the more of the toxic fly ash you have that has to be buried somewhere, and it indeed is hazardous waste. There are all kinds of problems with incineration. There are those big companies that promote it as a viable diversion, and it isn't.

I'm just really concerned that any government, should this not be corrected, would put, as Mr Bradley points out, that fourth R into the equation. I want to remind people again that that flexibility should not be allowed. This is happening all around us anyway. What we're trying to do here is get us into the more environmentally friendly ways of dealing with our garbage. This wording does not do it to the extent we should.

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**Mr Joseph Spina (Brampton Centre):** I listened with some interest to the member's comments and also to

those of the member for St Catharines. I'm surprised, because the last officially sanctioned and opened incinerator in this province was in Brampton, in my riding. If I recall, when the licence was granted to begin that process, I think the minister of the day was Mr Bradley. Isn't it ironic that when it was actually opened and sanctioned to be opened, it was under the NDP government? I'm not sure who the minister was at the time—Ruth Grier.

**Mr Bradley:** She wasn't there to cut the ribbon; I know that.

**Ms Churley:** You're right about that.

**Mr Spina:** It was Ruth Grier.

**Mr Bradley:** Neither was I.

**Ms Churley:** Neither was Mr Bradley.

**Mr Spina:** I can say that with the technology that is there today and within that particular facility, the emissions are absolutely minimal, if any, because anyone who has studied basic physics and science knows that if you burn any substance on earth at a high enough temperature, it will break down to its natural elements. Frankly, this particular facility is a model in the province, and it ought to be an option.

**Ms Churley:** He's done it now. Do we have to finish all the amendments today?

**The Chair:** No.

**Ms Churley:** You threw down the gauntlet there. This is an issue; I have to come back on that one. I have studied garbage incineration for some time and travelled around and looked at various kinds of incineration. The reality is that you have to burn garbage at a very, very high, high temperature. The very act of burning it, including the plastics that go into it, actually creates dioxins.

**Mr Spina:** Which can be recycled back into the process and burned off.

**Ms Churley:** Then what happens is that there are dioxins, furans and other heavy metals. Dioxins are actually created by the burning process. You have to keep it at an even temperature, a very high temperature, at all times. As I said, I acknowledge that the technology has improved greatly, but that doesn't resolve the problem of the fly ash, the hazardous waste. Those dioxins, other heavy metals and furans have to go somewhere. If they're not spewed out in the air up the stack, they're in the fly ash.

**Mr Spina:** You are behind in the technology, though.

**Ms Churley:** And may I say—

**Mr Spina:** But you are behind in the technology. The only thing that comes out of there—

**Ms Churley:** I've got the floor here.

**The Chair:** In deference to our folks in Hansard—

**Mr Spina:** Dioxins are recycled, and the ash is in fact used for fertilizer.

**Ms Churley:** You're not going on Hansard.

**Mr Spina:** Because it's safe.

**Ms Churley:** No, it isn't. But anyway, the third component of this—

**Mr Spina:** Sorry, I didn't realize you got the master of science degree in the process.

**Ms Churley:** The third component of this, which is very relevant to this bill, is that in fact burning of garbage goes against the grain of this bill before us. We are trying to stop resource depletion, using up our resources. Building incinerators demands a lot of garbage be thrown in it, even if you separate it out, so it discourages the three priorities before us. What you need are policies that encourage composting and getting things out of the garbage to be reused and not put there in the first place. As soon as you start building incinerators, you are taking away that incentive.

**Mr Spina:** Why did you approve it?

**Ms Churley:** Then we brought in legislation, as you would not know, because you weren't here, banning incineration as an option in the province of Ontario.

**Mr Spina:** A stupid decision.

**The Chair:** Where do I start? Mr Arnott.

**Mr Arnott:** I think it would be appropriate to put the question at this time.

**The Chair:** When debate wraps up, Mr Arnott, but I saw that Mr Miller had his hand up as well.

**Mr Miller:** I just wanted to enter into the discussion, although it's off topic for this amendment. But seeing as incinerators were being discussed, I can't help but wonder, if incinerators are not being considered as an option at all, if you think it's better to have more landfill sites and create ticking time bombs. From my perspective, at least you can measure what comes out of an incinerator and you know what damage you're doing, and you're responsible for it, whereas if you bury the garbage in a landfill site, you don't know what half of the things that go into a landfill site are and you create huge problems for the future. As we know, water is a big concern in Ontario these days. Certainly landfill sites scare the heck out of me, to be honest, and especially for the future and the future of the water supply in this province.

**Ms Churley:** If I may answer that question, I agree with you. You will see that the landfilling of the designated wastes and the application of the designated wastes to land are also two of the others that I'm objecting to here. May I remind you once again that we're trying to move away from all of those options because they're no longer viable or sustainable. That is the purpose of this bill. So it's not just incineration but landfill we're talking about here.

I made an amendment last week, which was turned down, which would have given this new body the opportunity to start the process of composting and taking the organic wastes out, which is one of the major problems, if not the biggest problem, with landfill: the organic waste. We need to be taking that out of the waste stream, and this bill before us doesn't deal with it.

So what I'm trying to do is continually make the point that this bill should be about trying to move us out of landfill, which I agree with you is dangerous, passé, and we've got to move on—as with incineration—and deal

with the majority of our garbage, which can be done and is being done in other jurisdictions. As long as we allow ourselves to think in terms of we can put some things—I agree with you—in landfill or burn it in a fire, then we are not going to have the inducement to move in those other directions. In fact, studies in other jurisdictions have shown—you asked me a question and I’m answering you—when you put in tough laws that say, “You shall not landfill 80% of waste by X date” or “You shall not burn it by X date,” that in itself, when you have tough laws, will promote the 3Rs that we have before us and in fact composting and all of those things. The problem is this bill isn’t strong enough to promote the very things that the bill is supposed to be saying.

I agree with you about landfills. We disagree on incineration, but as long as that’s in there, we don’t have the motivation or the legislative authority to force municipalities and industry to move in that direction. That’s the problem.

**Mr Bradley:** I think it’s the context in which the incineration is being suggested here. Perhaps that’s a debate for another day, and there could be a good and thorough debate on incineration, landfill and other ways of waste disposal. This bill is entitled An Act to promote the reduction, reuse and recycling of waste, and I think that’s where those of us who are sitting on this side have a concern about the possibility of incineration being found in this legislation. If you’re going to bring forward some other legislation and have a debate that deals with waste disposal as opposed to waste diversion, then I guess debate involving landfilling and involving incineration, involving application to land, might have some relevance. But clearly the purpose of the amendment takes into consideration that we’re dealing with a bill which is a waste diversion bill, not a waste disposal bill.

There is another day to argue those points about incineration, including the fact that as soon as you set up an incinerator, you immediately have people who want the very things you want to divert, that you may want to recycle or reuse. They want those as fuel for the incinerator. So it’s not only the emissions, it’s not only the fly ash, it’s not only the more benign bottom ash—which is more benign than fly ash, but still ash that has to be disposed of somewhere—but it’s also the fact that it tends to interfere with the 3Rs when you allow incineration.

There was a proposal in London at one time for an incinerator. Instead, I think London embarked on a more ambitious program for reduction, reuse and recycling rather than proceeding with the incinerator, which made some sense in those days, because that’s exactly what happens. As soon as you open the door to further incinerators in the province, I think that’s what happens.

Be that as it may, as the lawyers say, I just look at the title of this bill and say that I believe we should not be discussing incineration and burying and applying to land in a bill that deals with waste diversion. In terms of an option for waste disposal, that’s a debate for another day.

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**Mr Miller:** Ms Churley was talking about organics. I believe it was Mr West who pointed out last week that organics are one of the 10 wastes that can be designated under this bill.

**Ms Churley:** Well, I’ll go into that later again.

**Mr Miller:** I would certainly agree with her that organics should be something we’re encouraging to divert from landfill sites. I’m happy to say that in Parry Sound-Muskoka and Bracebridge we do have our own composting plant, near the town of Bracebridge.

**The Chair:** Seeing no further debate, I’ll put the question.

**Ms Churley:** A recorded vote, please.

### Ayes

Churley, Levac.

### Nays

Arnott, Mazzilli, Miller, Spina.

**The Chair:** That amendment is lost.

The next amendment is also from Ms Churley.

**Mr Bradley:** If I were substituting, I would have voted for it.

**Ms Churley:** Get that on the record as a point of order.

I move that subsection 24(5) of the bill be struck out and the following substituted:

“Blue box program threshold for payments to municipalities

“(5) A waste diversion program developed under this act for blue box waste shall provide for payments to municipalities that total at least 50% of the total net operating and capital costs incurred by the municipalities, on and after the day this act receives royal assent, in connection with the blue box waste.”

Speaking briefly to this, because I’m sure others will want to come in, the government made an amendment that was an improvement over the initial bill, which said “equal to,” and I’m saying at least 50%, which gives a guarantee that it could be in fact more money.

I think the key thing about this particular amendment is that it guarantees 50% of the funding for the total net costs of the blue box programs incurred by the municipalities, beginning in 2002. So there is a timeline here. That is critical, because right now we have a situation where municipalities are very anxious to have this bill passed. They know that at least they will be getting some funding, but there is no time frame, no timeline in the bill. So I’m hoping people will support this particular amendment.

**The Chair:** Further debate?

**Mr Arnott:** Thank you to Ms Churley for moving this amendment. It’s my understanding that the intent of her motion would be to require industry to pay at least 50% of the total net operating and capital cost of the blue box

program, and the obligation for industry to pay would begin once this bill receives royal assent.

**Ms Churley:** So it would be retroactive? Sorry, I'll let you go ahead.

**Mr Arnott:** It is the position of the government that this amendment should not pass. The 50% funding agreement of the blue box program was the subject of extensive consultation by the Ministry of the Environment with affected groups, resulting from the extensive discussions between industry and municipalities, as part of the voluntary Waste Diversion Organization initiative. The proposed motion that has been tabled with the clerk from the government side, which I think we will deal with next, clearly reflects the intent in the letter of agreement. The WDO is best suited to determine the net costs of the blue box program as part of their development of a funding program—that is the government's belief—and the obligation for industry to pay can only be at the time the minister approves the program and designates the industry funding organization, through regulation, to collect the fees. The obligation to pay the fees cannot be retroactive.

**Ms Churley:** I wanted to speak more about the timing. I think it's a critical component of this bill. The municipalities, as everybody knows, want this bill passed. We've all received calls about it; I, perhaps, in particular, because I'm making these amendments. I understand that, because there has been no funding.

I have a chart, from working with the Toronto Environmental Alliance, that looks at time frames. This chart outlines all of the time frames we have in the bill and, from what we understand about how things work around here, earliest-time/best-case scenarios and latest-time estimates. I just want to make it clear that when I go through these time frames with you, you're going to understand why it is critical to pass my amendment, because I can assure you that if this bill is passed—and there is pressure on all parties to do so, I admit that—if this time frame goes to the worst-case scenario or somewhere in between, these municipalities are going to be very upset. They are pushing this bill forward, knowing there are flaws in it, on the basis that they're expecting this money.

I'm just going to quickly go through the time frame I talked to you about. Let's think through what the bill before us says.

The earliest time estimate we have for the appointment of the board of directors of the WDO is one month. I think that might happen. I don't know, with the way things move around here, but let's say that's the earliest time. The latest time estimate is three months. Just add these months up as we go along.

Then we have to have an operating agreement, and let's say the earliest time—and I'm being very generous here—is two months. The latest time estimate is six months or more. I think, given the difficulties we've seen in the past under all governments with this, even six months is very optimistic, but I'm being generous with that.

Then there's the posting of the operating agreement for public comment under the EBR, which we all agree is essential. The earliest time frame for that is one month; the latest time estimate here is three.

Then we have to have the designation of waste by the MOE through regulation, posting of that regulation under the EBR and notification to the WDO to develop the program.

**Mr Bradley:** There will be an election by then.

**Ms Churley:** There will be an election by then; that's right. Now, bear in mind that those things will happen concurrently with the development of the operating agreement. So looking at those will all have to be done after those other months have passed. I think Mr Bradley is right: we'll be into an election by then.

Then we have to have the establishment of the IFO. Mr Arnott is nodding his head. He knows we've got a problem here. The earliest time estimate is one month, and that's being extremely generous, isn't it? But let's say it could take up to four months or more.

Development of the program: earliest time I would say—this is very complicated stuff—three months. The longest time frame we're looking at is probably 12 months for that. That's going to be a very complex, difficult process, as we well know.

Then there are consultations with the public and stakeholders. I've given two months as the earliest that can happen, and the latest—it would probably take up to four months.

Then, again, posting for public comments under the EBR: generously, it could be done in one month, but it could be up to three months, because we all believe in public consultation and, in fact, under the EBR, people demand it.

If you add up those numbers, the earliest it can happen with all of these extremely generous time frames, assuming that everybody is going to get along great, everything is going to work out fine and there aren't going to be any problems whatsoever, we're looking at 11 months, with the program implemented in December 2002. Again, I think even that is generous in terms of some of the issues we're going to have to deal with. The latest time frame would be 35 months or more, if you add up those months, and the program would be implemented in December 2004 or later.

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I don't know if people have been involved. I have and I know Mr Bradley has, more so than I. The complexities of trying to deal with these issues are great. You bring the industry together and then you get the municipalities in the room and then all the programs, all the difficulties that come up—I think the 35 months or more program for December 2004 or later may even be optimistic. But that, I think, is more realistic. That's probably what we're looking at. The 11 months, December 2002, is what we'd like to see, but that's dreaming, given what we have before us and all the work that has to be done. I just want to make it clear: we pass this bill and municipalities are then going to be saying, "OK, come on, come on, let's

get it together.” It ain’t gonna happen. They’re not going to see that money by December 2002. It’s just not going to happen. They want it now, yesterday.

My amendment, as Mr Arnott knows, deals with the fact we want it retroactive, and we want it to be retroactive because that money ain’t going to be there for a while. When we’re looking at these bills and when people are counting on this funding, which they are, and are pushing all three parties to pass it for that reason, even with some of the flaws, we have to be realistic about what we can and can’t do here.

I urge you to pass the amendment before you today, so that at the end of day, when this bill is passed, if it’s passed—and you have the majority; it will be—these municipalities will know they can count on the funding retroactively. That’s why the amendment is before us.

**Mr Levac:** I have a question for clarification, then, and an observation I would make from my discussions with some of the constituents in my area plus the phone calls I’ve received. Could the parliamentary assistant clarify—I think I heard you say you were not in favour of the amendment because of the retroactivity being recommended in the NDP motion. Did you imply that you can’t do it or that you didn’t want to do it?

**Mr Arnott:** It’s not the position of the government that the funding should be retroactive.

**Mr Levac:** OK. So it’s not that it can’t be done; it’s that the position is, you don’t want to do it.

**Mr Arnott:** Conservatives understand that the money doesn’t grow on trees. It has to come from somewhere, and the principle of the bill is that industry will assist in the cost of the waste that is generated by industry.

**Mr Levac:** So the costs you’re talking about, and that Ms Churley makes the observation of—the time frames she’s presenting would make it very difficult for municipalities to say, “Yes, we like it, but at the same time show me the money,” kind of attitude.

**Mr Arnott:** Ms Churley paints a scenario that may be a worst-case scenario in terms of timing. I’m well aware that municipalities are anxiously awaiting a revenue stream from industry through the mechanism that will be established through this bill, and they would appreciate the opposition parties’ co-operation to move this bill forward. I think the opposition parties have been very responsible throughout this committee process and in the House too, and we appreciate that. I think municipalities appreciate that.

However, it’s certainly my understanding that the provincial government wants to move forward as quickly as possible, assuming this bill is passed by the House, to set up the mechanisms that allow the money to flow to the municipalities.

**Mr Levac:** That being said, the observations go hand in hand with what you mean in terms of a monopoly by Conservatives on understanding that money doesn’t grow on trees.

**Mr Arnott:** I didn’t say that. I said the government understands that.

**Mr Levac:** If you want to check the Hansard, you said, “Conservatives understand that the money doesn’t grow on trees,” and I was saying that that observation is not a monopoly.

**Mr Arnott:** I didn’t say it was a monopoly, Mr Levac.

**Mr Levac:** I’m saying it is. I’m paraphrasing you, and then I’m making my comment. My comment is that you’re not the only ones with an understanding of where the money comes, and that it’s maybe repriorizing where the money should flow from and to, which doesn’t answer the original question.

Your first answer did answer the question: there’s nothing illegal or nothing that prevents the government from making it retroactive. That’s a choice the government is making. Having said that, the observations I’ve been receiving from those people who are interested in this particular bill indicate to me that they’re concerned that if you don’t show them the money soon enough, because of the situation the municipalities are finding themselves in, then that is an extremely tight money frame. They’re looking for that source.

From your observation, you said that industry could step up to the plate. The question I have is whether industry has indicated that, yes, it’s going to step up to the plate and maybe make sure that money is available before the 50% kicks in. Because in a worst-case scenario, if the money doesn’t flow for 30 months, the municipalities are stuck with not having that money to support the blue box programs we’re enticing them to get involved in.

My encouragement to the government would be, if that is an influence on your end, that you would favour us with that influence to indicate to industry that there is a problem, we don’t have a free flow of money, and that if they can step up to the plate to assist our municipalities we would welcome that, and the municipalities would welcome that as well.

**Mr Bradley:** The enthusiasm of AMO may well be dampened by the suggestion that these payments are not going to be retroactive. They may drop the pompoms at the signal from you that you’re not prepared to make that money retroactive.

As Mr Levac has appropriately pointed out, municipalities are under great stress now. We need only talk to our local councils to know that they have had to assume some new responsibilities that are onerous in terms of expenditures they have to make. Some of those are reasonable—some are an unfortunate download, I think, but some are perhaps more reasonable obligations. For instance, you’re going to make municipalities adhere to the Ontarians with Disabilities Act provisions. It’s appropriate that municipalities should have to, but that’s going to cost some money. You are requiring that they make changes in the way they deal with drinking water. That’s certainly acceptable, but again that requires an expenditure.

They are also expected to move forward with waste diversion programs. Regardless of when this bill is passed, they’re expected to move forward. They would

very much appreciate having that funding in place at the earliest possible opportunity or, in this case, retroactive funding, because the wastes are accumulating today, the problem is there today.

I think the amendment is reasonable, and I'm frankly quite surprised that the government members have not been enthusiastically in favour of the amendment as opposed to simply the stand pat government position that virtually all amendments are not reasonable.

I would appeal to people such as Mr Miller and Mr Mazzilli, as independent-minded individuals representing their municipalities—in fairness, I must say I understand Mr Arnott is the parliamentary assistant and is required to give the government position, just as a minister would. For that reason, I don't blame or point fingers at Mr Arnott, but there's no excuse for my good friend Mr Mazzilli or my good friend Mr Miller to adhere to an ill-conceived government policy in this case, and it's your chance to show your independence and your support for your municipalities. On that basis, I would look forward to your support for what I consider to be a very reasonable amendment instead of, as I say, putting the knife through the heart of the municipalities, who no doubt are looking for funding on a retroactive basis.

**Mr Mazzilli:** I just want to add that I am supporting my local municipality and that I don't want to see them incur any legal costs from people arguing that legislation was passed in a retroactive manner. I will be supporting the parliamentary assistant that the bill move ahead, and after it's passed it becomes law like every other piece of law in this province and this country.

**The Chair:** Further debate? Seeing none, I'll put the question on Ms Churley's amendment.

**Ms Churley:** Recorded, please.

#### Ayes

Churley, Levac.

#### Nays

Arnott, Mazzilli, Miller, Spina.

**The Chair:** The amendment is lost.

The next amendment is a government amendment.

**Mr Arnott:** I move that subsection 24(5) of the bill be struck out and the following substituted:

"Blue box program payments to municipalities

"(5) A waste diversion program developed under this act for blue box waste must provide for payments to municipalities to be determined in a manner that results in the total amount paid to all municipalities under the program being equal to 50% of the total net costs incurred by those municipalities as a result of the program."

**The Chair:** Do you wish to speak to the amendment?

**Mr Arnott:** Yes. The purpose of this motion is to clarify current wording in the act related to industry's obligation to pay 50% of total net costs of the municipal

blue box program. The current wording, "shall not provide for payments that total more than 50%," was unfortunately interpreted by some municipalities—and we heard this in the course of the hearings—as meaning that industry could pay less than 50% of the blue box costs. We hope this will clarify the issue for all concerned. This change more closely reflects the voluntary Waste Diversion Organization's recommendation on this issue in their final report.

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**Ms Churley:** I said earlier that I think this is an improvement, that the government came some distance to guaranteeing that 50% funding. The reason I made my previous motion, of course, is that it does not put a time limit on when that funding will begin. I won't reiterate what I said earlier, but that is such a critical piece of this bill, and it's missing. Given the possible time frame problems that I expect we'll have, municipalities are not guaranteed that funding in a timely fashion. I guess I'll support it because it is an improvement, but it's not going to deal with our specific problems around the timing. You went halfway in trying to deal with that specific problem, but the big piece is left out, as the parliamentary assistant well knows.

**Mr Levac:** In acknowledgement of 24(5), the amendment does offer what I heard at the hearings both from municipalities and the waste. They said they did want to step up. I recall a couple of occasions where the industry had indicated its willingness to pay 50%, and the fact that the municipalities were actually mentioned this time, the fact that they would be getting at least 50% of the funding, appeased them greatly because, as we know, they weren't getting any. That was the move they were looking for, and that was where most of the excitement came from the municipalities in that support.

I would also encourage the government again to, as expeditiously as possible—as has been painted before, it could have been a worst-case scenario, but I would hope the government could work toward avoiding the worst-case scenario as best it possibly can, since it didn't accept the last motion. Maybe the parliamentary assistant could point out any opportunities that are there that could help explain that maybe it was a worst-case scenario and because of a, b, c and d, we're not going to see 33 months. If you have that information or could seek clarification from the ministry staff to assure us that maybe it won't be that bad—is there an opportunity for that clarification?

**Mr Arnott:** I'm not in a position to guarantee that won't be the case, Mr Levac, but you certainly have my assurance that the minister believes very strongly that this bill must go forward as quickly as possible to assist the municipalities that we all heard from and wants to see that happen and do all she can to keep the momentum, to keep things moving forward such that we can implement this—

**Mr Levac:** I appreciate the undertaking, and I know the municipalities would deeply appreciate it because of the circumstances they're faced with today.

**Ms Churley:** I have a clarification question. During my similar motion, but dealing with time frames and retroactivity, you did say—can you clarify for me whether the municipalities are aware that it's not retroactive?

**Mr Arnott:** Have you told them?

**Ms Churley:** Can you clarify for me if the government, in the hearings—

**Mr Arnott:** I'm not sure. I'd assume some may be aware. I certainly haven't informed any that it would be. I'm not aware of any official communication that's gone out, but certainly I assume municipalities that were interested have copies of this bill. The bill is on the Internet and there are all kinds of means of—

**Ms Churley:** So then obviously there must be—

**Mr Arnott:** AMO has analyzed it. AMO has been in and AMO, I'm sure, has sent out information to municipalities. So I would assume that most would understand that the current bill did not include a retroactivity provision.

**Ms Churley:** If I could ask another question, do you recall if, when AMO gave its presentation, they discussed this issue and asked for it to be retroactive? Did they express a concern about that?

**Mr Arnott:** I'm afraid I don't recall and I don't have a copy of the presentation in front of me, but I'm sure that could be researched.

**Ms Churley:** OK, thank you.

**The Chair:** Any further debate? Seeing none, I'll put the question on Mr Arnott's amendment. All those in favour? It's carried.

The next amendment is yours, Ms Churley.

**Ms Churley:** I move that section 24 of the bill be amended by adding the following subsections:

"Payments to municipalities for disposal of waste not covered by program.

"(6) Subject to subsection (7), where a waste diversion program developed under this act does not provide for all of the designated waste to be reduced, reused or recycled, the industry funding organization that the program is developed in co-operation with shall provide funding to municipalities equal to 50 per cent of the total net operating costs incurred by the municipalities to dispose of the portion of the designated waste not reduced, reused or recycled under the program.

"Same

"(7) Where a waste diversion program developed under this act does not, in any year, result in the reduction, reuse or recycling of at least 60 per cent of the designated waste, the industry funding organization that the program is developed in co-operation with shall provide funding to municipalities equal to 100 per cent of the total net operating costs incurred by the municipalities to dispose of the portion of the designated waste not reduced, reused or recycled under the program that is the difference between 60 per cent of the total amount of designated waste and the percentage of the total amount of the designated waste that was reduced, reused or recycled in that year."

If I may speak to that, this follows from the logic of the 60% target. It's a holistic approach to trying to get industry to deal with all the waste they produce, and this, I would assume, would be good from the municipal point of view.

I want to clarify; sometimes this legalese language is not really clear. I'm saying that even with the target met, the 60%, they would have to pay 50% of that 40% that's left over. So they have to deal with the 60%, and there's 40% left over which under this act they don't have to deal with, but they would still have to pay 50% of that 40%. This is something that I believe should be supported, because once again we have to remember that this bill before us is about waste diversion. It doesn't go far enough, and I believe municipalities would support this amendment; in fact, I know that many people I talk to from municipalities do support it. I hope very much that you will move forward with this one and indeed strengthen this bill.

**The Chair:** Further debate?

**Mr Arnott:** I want to thank Ms Churley again for this helpful amendment. It's my understanding that this motion would provide that industry would be required to pay 50% of disposal costs for materials covered under a program that are not diverted. In addition, it also would require industry to pay 100% of the net operating disposal costs for any designated material under the 60% diversion target, as Ms Churley indicated. For example, if material was diverted at 40%, then industry would need to pay 100% of the disposal costs for the 20% difference. That is my understanding of what Ms Churley has moved in terms of the intent of her motion.

I must inform the committee that the government does not support this amendment. I've been advised that this is a new policy direction for the legislation, going beyond the scope of its intention. None of the consultations leading up to this bill with our partners contemplated payments for disposal, as the intent of this initiative is to promote and fund waste diversion programs. There is no incentive in either of these sections for municipalities to maintain or enhance current diversion activities, as their disposal costs would be subsidized by industry, in effect, and funding for landfilling could act as an incentive for municipalities to actually reduce their recycling. That is the belief of the government, and for those reasons the government is not supportive of this amendment.

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**Ms Churley:** If I may, what this motion addresses is the need for industries to partially—not fully, but partially—support the costs of disposal of designated waste. It also provides an incentive to industry to support that development of those programs that reach the high diversion targets. It is an incentive as well for industry to reach those, and that's something else that's missing from this bill, that incentive. Again, unless that incentive is there, you have a very weak bill which is not going to do a whole lot to divert as much waste from landfill as we need. That's why it's there, once again: to be helpful, to try to improve and strengthen a bill to get us where we need to be.

**The Chair:** Further debate? Seeing none, I'll put the question on Ms Churley's amendment.

**Ms Churley:** Recorded, please.

**The Chair:** Ms Churley has asked for a recorded vote.

### Ayes

Churley, Levac.

### Nays

Arnott, Mazzilli, Miller, Spina.

**The Chair:** The amendment is lost.

Shall section 24, as amended, carry? Carried.

Section 25: amendments, debate? Ms Churley.

**Ms Churley:** I move that subsection 25(3) of the bill be struck out and the following substituted:

"Decision of the minister

"(3) The minister shall decide in writing to approve the program, to not approve the program, to modify the program and approve the modified program, or to direct Waste Diversion Ontario to modify the program and to resubmit it for approval."

This is one of these issues that I think some deputants—it might have been Mr Gord Perks, who is with us here today from the Toronto Environmental Alliance. I believe it was he who made the steering and rowing argument. Is that correct? Yes, it was he. That is, we have the problem backwards here in this section, that the minister should be doing more of the steering. That's what this amendment does. We have a situation now where the minister's options are very limited. The way the wording is now, if the programs aren't going very well, if there are issues or problems, the only option the minister has, the only choice, is to approve or not approve them. Under the existing legislation, if it passes without this amendment, she won't be able to ask for improvement on programs or some changes that would make them work better. It's just approve or not approve. I believe it is really incredibly urgent that this be amended so that the minister would have those options to not just say yea or nay, but to be able to say, "I've looked at it. I like it, but these are the specific issues that need to be fixed," and not just have that left up to the waste diversion group.

I hope, Mr Arnott, the government can support this one. For the life of me, I don't know what you're going to say if you say no to this one.

OK, here we go.

**The Chair:** Further debate?

**Mr Arnott:** I want to thank Ms Churley for her amendment and bringing this forward today. As we've discussed earlier today, and I think last week all the committee members—

**Ms Churley:** Can't hear you. Sorry.

**Mr Arnott:** All of the committee members are very keenly interested in seeing this bill passed as quickly as possible so as to get the ball rolling. It is the concern of

the government that this amendment might actually delay the establishment of waste diversion programs. In theory, if this amendment were passed, the minister might be involved in lengthy negotiations with the WDO for the final program and in effect it might create unnecessary delay. For that reason, the government is opposed to this particular amendment.

**Ms Churley:** I think, Mr Arnott and government members, you've got this one backwards and wrong. I think just the opposite: that if you have a minister with more ability to have a say, as opposed to approving or disapproving, that could speed things up. The minister could just say, "No, I don't approve this," but without any ability to ask for modifications or to become involved, who knows how long it would then take to get people back to the negotiating table?

As Mr Perks said in his presentation, you've got the wrong people doing the steering here. The minister should have more of an opportunity to be doing that. With all due respect on this one, I know you're the parliamentary assistant and you're provided with notes. That's fair; that's what happens in these committees. I'm not criticizing that. I've tried to listen to the rationale behind your non-support for my amendments. I don't understand this one. It honestly doesn't make any sense.

Previously, I know there was some ideology involved and different thoughts on where we should be going, but on this one I don't understand the rationale. It makes absolutely no sense. Just think about it. I don't know if government members would agree with me on that, but why would you not have the minister—he or she should be either in or out of it. If you're going to get the minister to approve or not approve, why not give that minister the ability to have a say in some modifications that he or she thinks are necessary?

**Mr Arnott:** It is the position of the government that this very likely would cause unnecessary delay in the establishment of the waste diversion programs—

**Ms Churley:** But why?

**Mr Arnott:** —and so for that reason the government is not supportive of this amendment.

**Mr Levac:** The comment I would make on this particular amendment is that I think it's seeking to provide flexibility for the ministry to prevent the very thing that I believe the parliamentary assistant is assuming the government says it will cause.

If there is a plan that is presented to the ministry by the WDO and there are three or four things that might be a problem for the government or its interpretation of this true belief in the three Rs, they're going to have to say no to the plan and then send it back and have it modified, or they accept the plan knowing that it's in conflict with what the ministry truly believes should be happening in the three Rs, meaning that they're going to accept a plan that is substandard to what their belief system is. Having this amendment provides the ministry with the opportunity to go to the WDO and say, "There are three points we'd like you to modify, and as soon as you modify those, we can bring them back and the plan's OK."

Having this rigid yes or no, in my opinion, holds back the ministry's ability to say, "We've got a small problem inside a plan that we can't approve if you have those three things in there."

Finally, my own example would be from my critic's role for the Solicitor General in firefighting. We know that municipalities, through their fire chief—and if they don't have a fire chief, through their fire advisors—give in community plans for what they believe their firefighting needs are. If the fire marshal sees some modification that's necessary, the fire marshal steps in and says, "I have the authority granted to me by the ministry," acting on behalf of the ministry, "and we think you need to tweak it and hire three more firefighters." They don't say, "Your plan is not accepted." They say, "Just make these modifications and your plans are OK."

That's the logic I'm using on this, and I really find it a little difficult trying to grasp that whole delay process. I would speak in favour of the amendment for the government's purposes and also for the purposes of getting these plans on the road.

**Ms Churley:** I have found the words of Mr Perks here. He doesn't have the ability to speak today because it's just the committee. I think his words represent the problem far better than I've described it already, so I'm going to remind you of what he said. It really struck me when I was reading through. I wasn't able to be at the committee, but I read through the Hansard later.

This is what he said: "I've heard it said before that this relationship works best when government steers and industry rows, when government develops policy and the manufacturers do the things necessary to make their products and get them to consumers. This does it backwards." And this is the important part: "The industry representatives on the Waste Diversion Organization are the ones who develop policy with new industries that might want to enter a recycling agreement. The ministry has essentially handed over the policy function to the very same industries which have failed to fund the blue box for the last 14 years, or have funded it inadequately for large periods of that time. And the municipalities—the public sector—have to pay the majority of the cost to deliver the program. The system is backwards; the government is rowing and not steering."

That's fundamentally the case here, and that is the problem. We know there has been a failure and this very complex problem has been worse in the past, and the government needs to have a strong policy directive here. It's inadequate that she or he doesn't have that ability to do so.

1700

**Mr Arnott:** I acknowledge that Ms Churley and Mr Levac have made some interesting points. But I would ask Keith West if he wouldn't mind coming forward again to address some of those issues.

**Mr West:** I don't believe this bill gives any authorities over to Waste Diversion Ontario in the manner you have indicated. I say that in that the regulation-making authority is still retained very clearly with the minister

and with the government around what gets designated, how it gets designated and what the controls are around that designation.

The minister very clearly has the authority, as a program is being requested from the Waste Diversion Ontario board of directors, to very much specify what he or she is looking for in terms of the development of that program. Throughout the program, there is a member from the ministry who is sitting on the board of directors to provide guidance in terms of what the minister has requested at the outset.

At any time, under the legislation, the ministry has policy-making authority to guide the WDO in its process. We believe, at the end of the day, this will provide enough authority for a program to be submitted which is acceptable to the minister to approve without having to have any of the modifications or anything that is being proposed within this motion.

That's the intent of the bill, and there are lots of authorities and very clear policy and regulatory authority still available to the minister. We are not giving any of that to industry in the fashion that might be indicated.

**Mr Levac:** Thank you for that education and the clarification. Two things: I did not mention the fact that the authority would be given over to the WDO in my comments, and I didn't assume that was going to take place. What I was concerned about, and maybe you can answer this question, is that if at the end of that process you're still not happy with what you see, you either have to accept it or reject it. Is that correct?

**Mr West:** That's correct to a degree. There is a provision within that act that does allow the minister, through a regulation, especially around the development of the fees associated with any program, to initiate a regulation to impose those fees if she's not satisfied that they've been done to the degree that she felt they were to be done. That would be one caveat to that. But yes, the decision is a yes or no decision. You're correct in that.

**Mr Levac:** Having gotten to that point, if indeed the process that you described did not satisfy the ministry, and the officials within the ministry and those who are sitting on the WDO and those who are in the regulation situation and all those who got it to that point still said, "Well, you're still not getting it here," is there any other mechanism other than the yes or no, other than the regulations, as you said, for fees?

**Mr West:** With the kind of guidance that we think is inherent within the act, that the minister can give to the WDO, we don't expect that to happen.

**Mr Levac:** OK. That's good faith that you have in the industry. I appreciate that. I would still echo a concern that I have with the black and white, yes or no to a plan that needs to be approved by the ministry, which I'm assuming is ultimately responsible for all decisions in the first place regarding that. That the ministry would have to step forward and simply say yes to the plan almost implies—and I'm not saying you're saying that today—simply a rubber stamp, because they have to, because the ministry has to be responsible for saying this plan is OK,

without giving the ministry that flexibility that's been spoken of by the members on the other side, that people need a little bit of flexibility to do some things within a certain scope.

I will bow to the fact that the ministry is suggesting to the government that you're satisfied with that. I'm speaking in favour of making sure that the ministry has the ability to say, "Yes, that's not a bad plan, but there are some things in here that I think need to be modified. Send it back and get it back to us."

The process doesn't seem to me, the way you've described it, to be one of time-consuming versus what was suggested by the parliamentary assistant, that it might take more time to pass. In the process you described, it's going to take just as much time to flesh out those regulations and flesh out the plan as it would if you were to modify it or send it back for changes.

That's a comment, providing you with the opportunity to say something in response. Is that a fair assessment?

**Mr West:** I think we have very clear authority under this to set very clear timelines associated to program development, and there are approvals associated with that development. I expect to see that happen, and I expect to see good guidance given to this board of directors from the ministry where it's necessary, plus giving them the flexibility to develop the programs that meet a variety of needs. I see the process as having all sorts of checks and balances in it right from the start, all the way through it and right to the end.

**Mr Levac:** I appreciate your confidence and thank you for that.

**The Chair:** Further debate? Seeing none, I'll put the question.

**Ms Churley:** A recorded vote, please.

**The Chair:** Ms Churley has asked for a recorded vote.

#### Ayes

Churley, Levac.

#### Nays

Arnott, Mazzilli, Miller, Spina.

**The Chair:** The amendment is lost.

**Ms Churley:** Not again.

**The Chair:** Shall section 25 carry? Carried.

Are there any amendments to sections 26 through 29? Seeing none, I'll put the question.

Shall sections 26 through 29 carry? Carried.

The next amendment would be yours, Ms Churley. We're on section 30 now.

**Ms Churley:** I move that subsections 30(2) and 30(3) of the bill be struck out.

**The Chair:** Do you wish to speak to your amendment?

**Ms Churley:** This is what I call "the newspaper clause." I understand the government has an amendment on this as well, but it doesn't go far enough.

The legislation now provides that an industry group, instead of giving their share of money, can give free ad space. I don't know if people are aware, but newspapers are one of the biggest items in the blue box, and I think they absolutely have to pay their fair share.

From my understanding, some mayors and councillors—not all—want the money, not the free ad space. This makes it fundamentally clear that it would guarantee that all industries, including the newspaper industry, pay their fair share of the program instead of making in-kind contributions. Those are in-kind contributions that the municipalities therefore have no control over. This makes it abundantly clear. I don't think this is an area where we should be flexible. If newspapers want to give free ad space for good causes to the municipalities, then they should do that. I encourage them to do that.

This bill is promoting the three Rs, and all of the participants in the blue box system should be paying their fair share. They owe a fair amount of that fair share, and should they not be paying it? In just giving ad space, there is going to be a big hole in funding that some people would say is not adequate anyway. So once again, I would ask all members to support this amendment.

**Mr Arnott:** I want to indicate that the government is opposed to the amendment in this case. I want to inform Ms Churley that voluntary contributions, such as the Canadian Newspaper Association's \$1 million in free advertising and the LCBO's \$5-million-per-year voluntary payment, have been clearly contemplated in the development of this bill from day one.

This section allows for these to be recognized and included in the programs that are developed, so it's very important. Currently, it's my understanding that the industry funding organization could accept voluntary contributions and determine the impact of these on that industry's fee obligation.

The proposed government motion on this matter will require that the WDO also approve these contributions and their impact on the fee obligation. It's not expected that voluntary contributions will play a large role in these program initiatives.

1710

I would argue that there is an economic value in the free advertising that is being offered by the Canadian Newspaper Association—obviously that is something that other people have to pay for—and there is considerable merit in continuing to promote the idea of recycling and the environmental value of recycling, and through our community newspapers, people are continually reminded of the need to recycle at home and at work. Obviously we want to continue that kind of positive information being circulated through our local newspapers. For that reason, I think there is considerable value in this free advertising that has been offered and it should be considered and reflected in terms of this issue.

**The Chair:** We'll come back over to this side.

**Mr Levac:** A question of clarification for the parliamentary assistant: had there been a calculation done when this amendment was put on your desk or on the

minister's desk? Has there been a calculation made of the fees that would have been given in terms of the monetary versus the amount of money that has been calculated for the free advertising? What's the trade in balance? Is there one?

**Mr Arnott:** I'm not sure I understand the question, Mr Levac.

**Mr Levac:** Well, it's asked that the fees they pay be waived in lieu of the amount of money or the ads, and you've indicated about \$1 million worth of free advertising.

**Mr Arnott:** The Canadian Newspaper Association is to contribute \$1 million in free advertising.

**Mr Levac:** Is that for Ontario?

**Mr Arnott:** Yes.

**Mr Levac:** That is strictly for Ontario. The fees that they would have paid—what does that equate to? That's why I asked if there is a comparison between the amount of fees they would have paid versus the amount of free advertising they're getting. What is the trade-off that we're making?

**Mr Arnott:** I'm afraid I don't have those figures in front of me.

**Mr Levac:** Can we get a nod from the back here as to whether or not that is calculated?

**Mr Arnott:** We can try to get you an answer on that.

**Mr Levac:** I'd appreciate that, because in terms of the municipality or WDO or any of the organizations taking out ads, I have to be realistic here that any fees they would have paid would have to go back into advertising anyway. I understand that position, but I want to make sure that the reason they're doing it is not because, "Hey, we save \$500,000 a year. Let's do it this way and have a clause in there that escapes us for that month."

I'm looking for the responsible use of education, which came up as a theme in the hearings, supported by all: the ministry, the industry, municipalities and anyone who spoke, even on an individual basis, spoke about education being a prime factor. If you can educate through the media, then that's understood. I'm concerned that if the trade-off is simply a monetary issue I need to know what those numbers are, and I appreciate your undertaking to get that information for me.

*Interjection.*

**Mr Levac:** If it's available, I'd like to have it before I decide whether I can support the amendment.

**Mr West:** It would be very much incumbent upon the Waste Diversion Ontario board of directors, in their funding formula, to look at what the costs are associated with any industry sector in terms of the materials that are collected in the blue box.

That changes in any given year, depending upon the costs of recycling within the markets. Those costs will change. I can't give you an absolute in black and white as to what this looks like, because they vary from year to year depending on the markets. There will be times that newspapers do pay their way within the system and they clearly do from a market perspective, and there will be times when they don't. The funding formula is going to

have to respect when they make a payment and when they don't make a payment, but that's very clearly part of their commitment to the Waste Diversion Ontario initiative.

**Mr Levac:** That being said, in as generic a way as possible—I'm still looking for the equation between the waiving of the fees altogether, which is what this portion of the bill does; it waives the fee for services or goods given. Is there a balance, even if it fluctuates, between the amount of money which was quoted by the parliamentary assistant to be \$1 million regarding fees and the costs associated with the industry being involved in the WDO?

**Mr West:** My response would again be that it very much depends in any given year on what the recycling market is bearing for old newspapers. But the commitment of the Canadian Newspaper Association in this initiative has always been that regardless of whether they're paying or not paying, dependent upon the market conditions, they will always have a commitment to this \$1 million in advertising. It was very much part of the Waste Diversion Organization's one-year interim program. It worked very well and it was used not only for municipalities in terms of promoting their own waste diversion programs but also by the Waste Diversion Organization in promoting the 3Rs, and we expect that to continue as part of this initiative.

**Mr Levac:** Having said that, the listener in me hears that they're going to pay it anyway, so why are we exempting them from the fees?

**Mr West:** This is not just about the Canadian Newspaper Association. That's one element. We don't expect it to be widely used, but there may be situations where there is a legitimate contribution in kind that would be reflected under this clause. We don't expect it to be large, because municipalities are clearly looking for funding and that is what this is all about—to give them that funding to make their program sustainable. But we do think there may be appropriate times where something might be used as a contribution in kind, and subject to both the industry funding organization and the Waste Diversion Ontario board of directors approving it, it might be a legitimate reason to give an exemption from a fee payment or a partial fee exemption. It's all dependent—

**Mr Levac:** Is that flexibility in here as well?

**Mr West:** Yes, it is. That would be part of an extra motion.

**Mr Levac:** I appreciate that. My comment to you at the end of all of this is, if given by the industry year by year, whether it balances off or it doesn't actually equate to that is somewhat at the smaller end of the point, as long as it is not being used as, "I need to get out of expending this much money, so if I give a million and I don't spend two million, I save my company a million dollars." I have a problem with that philosophy if that is provided for in this particular amendment.

I would say on the positive side what I said earlier, that if, on the other hand, monies that would have been

spent on advertising by municipalities and/or the industry are covered off by that service provided by, say, the newspaper industry, it's a wash. Then I think everybody wins, because you get the education, you get the advertisement out there, and you also have the industry buying into the plan and buying into the organization. So I don't want to make it sound as if I'm saying no to it; it's more so concern about how it's applied across the board and whether the industry that's applying for the use of this particular "in lieu of" is doing so simply to get a financial bargain.

I would be interested in having then, if I can't get the actual year-to-year comparisons, maybe a five-year scope of the industries that we've been talking about. Give me an idea of what they would normally have paid in fees and then in comparison to what they would have done "in lieu of" with the donations made by "in kind," if that's obtainable.

**The Chair:** Thank you. Mr Mazzilli.

**Ms Churley:** I just have a follow-up question.

**The Chair:** We'll invite Mr West back.

1720

**Mr Mazzilli:** I want to make a couple of points. This is what scares me about any type of legislation. All that is meant well, and all of a sudden we start talking about essentially putting an industry out of business. The newspaper industry, through legislation like this—it doesn't take a rocket scientist to figure it out that there's a lot of consumption there. There's a lot of percentages in the blue box and in the diversion programs, and yet they're expected to produce a paper, half of it filled with nonsense that members in this room say, distribute it to the public and in return get some 50 cents or so for it. Then at the end of the process, at a time when probably readership is down and many people can go on line and read newsprint and have access to other forms of advertisement—here we now talk about an industry that obviously is caught between the consumption side and revenue.

What are we talking about here? Obviously they came to the table and said, "We'll put some in-kind donations on promoting the 3Rs," because they obviously know their consumption is large. They know that. And what are we talking about? How easy they got off, and they owed millions.

Well, do you know what? They're not going to be there if they're going to have to pay their fair share of this. I think that's pretty obvious. If we as members pursue that—that's what we do with legislation we bring forward that has good intent and yet at the end of the day we essentially force an industry out of business. I just ask members of this committee to keep that in mind.

**Ms Churley:** I do have a further clarification, but first of all I'd like to say that if you read through the Hansard of the committee public hearings, Ms Ann Mulvale, the president of AMO, made a deputation, as you know, and she raised this as a concern. So it's not just Marilyn Churley, the environment critic from the New Democratic Party, raising this, but I just want to point out that

this is a concern the municipalities have. She wanted further clarification of what these voluntary contributions would be and who they were. She mentioned the fact that there was concern about the lack of clarity with regard to what types of in-kind or voluntary contributions would qualify under this provision, and she specifically raised the issue of the Canadian Newspaper Association. They were able, as she said—and we know this—to negotiate in-kind contributions of advertising space to municipalities in lieu of funding for the newspaper recycling program, and that's what we're talking about here. She said some used it and some didn't, but, and these are her words: "This 'in kind' contribution did not help in any substantive way with the costs associated with blue box programs." She asked for amendments and she expressed concern about municipalities not having any say over this, and that is still a concern.

**Mr Bradley:** And she's a Conservative.

**Ms Churley:** And she's a Conservative at that. She put it very gently and mildly, but she expressed a major concern that this be dealt with, and I think we should pay attention to that.

Now I understand that in answer to Mr Levac's question—I don't know if I heard correctly, but I think the bill will not allow the newspaper industry to negotiate, in lieu of payments, their fair share, but that this would be extra, that they still would be providing their fair share, whatever portion that is, and this would be out of the kindness of their hearts and they'd provide some free ad space. May I put that question again, please?

**Mr West:** Mr Chair, through you to the member, I hope I did not say that.

**Ms Churley:** Well, that's why I want a clarification.

**Mr West:** I certainly would not want to—again, the Canadian Newspaper Association is no different than any industry sector that's affected by this legislation. There has to be a funding formula set up that sets out what the requirement for the payment of the fee will be. That's what this process is all about, to develop the program, to develop the payment around that program so that all industries are paying whatever share of their material is in the blue box for the blue box program. The Canadian Newspaper Association made it clear through the Waste Diversion Organization a year ago that they felt they wanted to continue with their \$1-million contribution in kind for advertising.

**Ms Churley:** So that would be taken out of—

**Mr West:** That has very clearly been part of this entire exercise as we've moved through. I don't think anybody's hidden from the fact that that's their intent. They have other commitments that they've made that we expect to see reflected within the funding formula as well. One of those is that if the market conditions are such—and it would have to be determined what the market conditions would be—they would also be making payments into the fund for the blue box program.

**Ms Churley:** OK. I thought I must have heard you wrong. That is exactly the problem. There will be some kind of funding formula determined, and they will be

able to continue to have \$1 million taken out of whatever portion they should be paying into the blue box program. That still would be the situation?

**Mr West:** At this point in time, that would be the intent of their commitment as part of their commitment to the program for funding the blue box.

**Ms Churley:** In terms of policy, I know your answer to my question here. I fundamentally disagree with it, but I wanted to ask: you mentioned earlier that it's not just the Canadian Newspaper Association, but there could be other industries that you would negotiate some kind of deal where they would be doing something other than, as well as paying a fee. Could you give some examples of who and what that might be?

**Mr West:** The counterpart to the community newspaper association is the Ontario Community Newspaper Association, and they may want to make a contribution in kind as well. In fact, I think they've indicated in front of the hearing a contribution of \$300,000 in kind as well. I think they've indicated that as part of a commitment they'd like to make as well. Beyond that, I'm not aware of any that have been any part of this discussion or any part of the negotiations that have gone on at the industry side, but they've always been clearly part of the play within the development of this initiative.

**Ms Churley:** Do you know of other provinces which have agreements with industry associations to do this?

**Mr West:** This is legislation that is different. I'm not aware of any other province that has this kind of initiative. I'm not aware of any other initiative that has newspapers as part of it.

**Ms Churley:** Thank you. Those are my questions, and I appreciate it, Mr West.

I think that sums up for me the problem with this, and again I want to reiterate that Ms Mulvale from AMO has expressed concern about this. At the end of the day, municipalities are the ones who have to deal with this, but they have no say in whether they get the money or the ads. It's just thrust upon them, and they wanted some amendments to this.

May I also say that I think it's unfair to other industries that don't have the kind of industry where they could sit down and negotiate some kind of special deal. It so happens that newspapers can offer advertising to municipalities, but there are other industries. One of the government members talked about the concern about putting an industry out of business because of their contribution to the blue box program. I would say that the Canadian Newspaper Association is in pretty good shape compared to some other industries. But they're the only ones who have that option, because they can offer something in return. There are a lot of other industries out there, I'm sure, who would like to be able to sit down and negotiate some way out of paying their full fee.

I think it's a fundamental fairness issue. It's a fairness issue both for the other industries—a level playing field—and for municipalities, as has been pointed out. It's been made very clear that this in-kind contribution—we've had experience with this in some municipalities,

and I think Ms Mulvale put it very kindly when she said it, "did not help in any substantive way with the costs associated with blue box programs." I think, if I could read between the lines here, she's saying it is a problem for municipalities, and they wanted amendments to that.

So I think this is really unfair, unwarranted. I don't like these kinds of backroom deals behind closed doors where certain industries get special deals and other industries don't have an opportunity because of the very nature of whatever it is they produce; they don't have anything like that to offer. I think this is wrong, and I hope that people will accept this amendment.

**The Chair:** Thank you. Further debate? Seeing none, I'll put the question.

**Ms Churley:** Could I have a recorded vote, please?

### Ayes

Churley, Colle.

### Nays

Arnott, Mazzilli, Miller, Spina.

**The Chair:** The amendment is lost.

This brings us to the next amendment. Mr Arnott.

**Mr Arnott:** I move that section 30 of the bill be amended by a) striking out "the industry funding organization may" in subsection (2) and substituting "the industry funding organization may with the approval of Waste Diversion Ontario" and b) striking out "specified in writing" in subsection (3) and substituting "specified in writing with the approval of Waste Diversion Ontario."

**The Chair:** Do you wish to speak to the matter?

1730

**Mr Arnott:** Yes. As Mr West pointed out earlier in his response to some of the questions that were coming forward from the opposition parties, we do have a motion to address this issue, and this is it.

The purpose of this motion is to require any voluntary contributions provided to the industry funding organization resulting in reduction of or exemptions from fees to be approved by both Waste Diversion Ontario and the relevant industry funding organization. As currently worded, an IFO could accept voluntary contributions and allow for a reduction in exemptions from fees, thus reducing actual funding to programs. Requiring WDO approval ensures that all members of the board, including municipal representatives, are aware of the proposal and that the majority of the board of directors would support it.

**Ms Churley:** Well, I have a real problem with this amendment, and I don't support it. You should have supported my amendment which dealt specifically with the problem.

The reality here is that what you're allowing is that these fee exemptions will be dealt with by a board that's made up of a majority of industry types. I put forward

amendments, and they failed. I thought it was quite reasonable, given that these really important fundamental decisions are being made and municipalities have far less than 50% on the board.

Furthermore it has become clear that as new industries come in with a new plan, they get a representative put on the board, but an amendment failed to allow that to be matched by somebody from AMO, from the municipalities. So we're going to see more and more industries represented on the board without at least 50% from municipalities.

I also lost the amendment for someone from the environmental community to be on, appointed by the OEN. I lost that amendment, and then I lost even the amendment to have somebody from the OEN as an observer.

So here we have a board that's made up mostly of representatives from the industry. The municipalities will begin to have fewer and fewer representatives on this. I've already pointed out that this is a problem for AMO, and here we have an amendment that—you think you're trying to fix the problem, but I think it's pretty clear what could happen as long as the board is weighted the way it is. So I don't know what to say. I just find this really disappointing. I wouldn't have such a problem with it had my amendments passed to allow a balance of representatives from the municipalities to sit on the board so that they'd have some influence on these kinds of decisions that directly affect them.

**The Chair:** Thank you. Further debate?

**Mr Bradley:** There are many complaints and some compliments from municipalities for the legislation; there are both, to be fair. One of the complaints they have had is about the amount of clout they believe they have, and they have a concern, without a doubt, that they will be swamped by industry representatives.

Ms Churley has appropriately pointed out that as new people come on board we're going to see some additional representatives from industry—and we want to see representatives from industry. Nobody is saying we shouldn't see representatives from industry. But I think municipalities, which are responsible for waste management, would want to see the kind of representation that they believe is fair. That would be at least 50%.

In addition to that, there are other players in this piece. There are public interest groups that would be justifiably asking to be placed in a position of responsibility, a decision-making position.

Again, the amendment would be much more acceptable if indeed we had that sense of fairness. Without it, I don't think the amendment is supportable. I think most people who are in the municipal field would agree with the position we are taking in this regard.

**Mr Arnott:** We're rehashing some of the arguments that were made when Ms Churley introduced her initial amendment. I comment again that it's my understanding that in their submission to this committee AMO expressed overall support for the WDO and including their membership on the WDO board of directors. This mem-

bership resulted from extensive consultation by the ministry and through the voluntary Waste Diversion Organization initiative. The board membership primarily reflects those directly affected by diversion programs, specifically those that are paying fees, and it also recognizes the agreed-to number of positions, with municipal stakeholders being four members.

**The Chair:** Further debate?

**Ms Churley:** Well, I just want to point out again that the parliamentary assistant is cherry picking some of the comments made by AMO. As I pointed out, this was an area of concern expressed and amendments were asked for. One of the issues that was addressed is that municipalities have a say, those municipalities that are to be affected have a say, and at this point they don't. As the legislation stands now, it's my understanding that they will make up only a third of the board, so they're going to be at a disadvantage. I just wanted to have that on the record, that this is an issue with municipalities, with AMO. They did raise it, it's a concern and it's going to be problematic down the road.

**The Chair:** Further debate? Seeing none, I'll put the question.

**Ms Churley:** Recorded vote, please.

**The Chair:** Ms Churley has asked for a recorded vote on Mr Arnott's amendment.

#### Ayes

Arnott, Mazzilli, Miller, Spina.

#### Nays

Churley, Colle.

**The Chair:** The amendment carries.

Shall section 30, as amended, carry?

Section 30, as amended, is carried.

Sections 31 and 32: are there any comments or amendments? Seeing none, I'll put the question.

Shall sections 31 and 32 carry?

Sections 31 and 32 are carried.

Section 33: Ms Churley.

**Ms Churley:** I move that subsections 33(7), (8) and (9) of the bill be struck out.

This is because it's an extra administrative cost charged to the industries. Here I'm speaking up for the industries, because I believe it's important, absolutely critical, that industries be onside and be involved in this, and we have to be offering them incentives to be so. So this is, in my view, a disincentive for participation in the program. Traditionally the province did these studies. I think at this stage of the game we want to give these industries every incentive that we can in terms of doing the studies that need to be done, getting the work done so they'll come into the program. That's what this is about.

**The Chair:** Thank you. Further debate?

**Mr Arnott:** I wish to inform the committee that the government does not support this amendment.

**Mr Bradley:** There's a surprise.

**Ms Churley:** You don't support industry?

**Mr Arnott:** This amendment is not something the government supports. It's my understanding that the purpose of this motion is to remove the ability for the WDO and the government to recover costs associated with industry stewardship plans, and it is the position of the government that the WDO and the government should be able to recover costs associated with these plans since approved plans provide an exemption from payment. If these plans are not effective, the industry or groups of industries should be required to pay the fees. The WDO needs to ensure that these programs are monitored and are meeting their fee exemption. So, for those reasons, the government does not support this amendment.

**Ms Churley:** I just wanted to ask a question about that. Did we talk about the Brewers Retail role in this? I know that is part of the bill. Because they are already 100% there, they too have to submit a plan, correct, to pay for it?

**Mr Arnott:** I believe they do. We have an amendment forthcoming that will deal with their issue.

**Ms Churley:** Forthcoming?

1740

**Mr Arnott:** Yes.

**Ms Churley:** So it's not before us, but it's coming? OK.

**Mr Arnott:** I think it's next after this one.

**The Chair:** Further debate? Seeing none, I'll put the question on Mr Arnott's motion.

**Ms Churley:** Recorded vote.

**The Chair:** Sorry, I beg your pardon—Ms Churley's motion.

#### Ayes

Churley, Colle.

#### Nays

Arnott, Mazzilli, Miller, Spina.

**The Chair:** The amendment is lost.

Shall section 33 carry?

Section 33 is carried.

**Mr Arnott:** We have an amendment to section 33.

**The Chair:** No, sir. I believe you have a new section 33.1.

**Mr Arnott:** We do.

**The Chair:** Which I would be pleased to entertain at this time.

**Mr Arnott:** I move that the bill be amended by adding the following section:

"Brewers Retail Inc

"33.1 (1) A program developed under section 22 shall not provide for the diversion of blue box waste that is packaging associated with products listed for sale by Brewers Retail Inc.

"Brewers and importers of beer

"(2) A program developed under section 22 shall not require the participation of or contribution by Brewers Retail Inc or a brewer or importer of beer in respect of blue box waste that is packaging associated with products listed for sale by Brewers Retail Inc.

"Annual report

"(3) Brewers Retail Inc shall, not later than August 1 in each year,

"(a) prepare a report on the operation of its packaging return system during the 12-month period ending on the preceding April 30, including,

"(i) a detailed description of the system, including information on how the system is operated, the objectives of the system and the methods used to measure whether the objectives are met,

"(ii) specific measurements relating to the system's performance in meeting its objectives during the period,

"(iii) the opinion of an auditor confirming the accuracy of the information referred to in subclauses (i) and (ii), and

"(iv) information on educational and public awareness activities undertaken during the period to support the system; and

"(b) provide a copy of the report to Waste Diversion Ontario and make the report available to the public.

"Signature

"(4) The report prepared under subsection (3) shall be signed by the chair of the board of directors of Brewers Retail Inc.

"Fees

"(5) Waste Diversion Ontario may establish and charge fees for administrative costs associated with reports provided under subsection (3).

"Same

"(6) A fee established under subsection (5) must reasonably reflect the costs incurred by Waste Diversion Ontario in performing the function for which the fee is established."

**The Chair:** Do you wish to speak to the motion?

**Mr Arnott:** Yes. The purpose of this motion, section 33.1, is to exempt the Brewers Retail Inc's packaging return system from being part of the blue box program to be developed under section 22 and the payment of fees to that program. The exemption is related to materials sold through Brewers Retail Inc. It does not include any items sold outside of Brewers Retail Inc and therefore not managed through their packaging return system. This exemption is based on the brewers passing a specific test outlined in regulation. The brewers are required to report annually to Waste Diversion Ontario to indicate that the test is being met. This report must be audited by a third party. Waste Diversion Ontario is able to recover any costs they've incurred related to the administration of this report. Brewers Retail Inc currently manages its packaging material through an independent system outside of the municipal blue box program and has assured us that it achieves a 97.6% diversion of waste from landfill.

**The Chair:** Further debate?

**Mr Levac:** I want to thank the parliamentary assistant and the ministry for putting these forward, because in the presentations it was brought to our attention by the industry that, in a closed system such as this, they did represent around 97% efficiency. For that in itself, we should be complimenting them and looking for many ways that we can duplicate that across the province. Where blue box is necessary, however, we should also be looking for ways in which we can move people from blue box to a closed system. So there should be some incentives built in somewhere so that enticement takes place. I would appreciate it if the ministry would also look toward bridging those particular examples and finding ways in which we can have people moved from blue box into closed systems. Thank you.

**Mr Mazzilli:** This is one of those amendments that was not taken into consideration when the legislation was drafted, and much like the other issue that we talked about on the newsprint end of things, obviously for that industry the price is large. In this industry they've been recycling because it makes sense. They've been reusing because it makes sense. People purchase beer out of a Brewers Retail and they return their bottles to Brewers Retail and the distribution system is one that allows for that. You know that if you're going there, you return your empties. In some other industries it's not that easy unless you plan to run a distribution system that has those volumes and those capacities.

I think it's important that we listen to industry because legislation like this—I think these are the big industries that know what the costs are. They know they were excluded and saw a problem and either approached the opposition or the government and it was changed; the amendment was put forward for them. It makes sense to put the amendment forward. I'm wondering how many industries have no idea that they will be affected in a hard way, that don't know they will be affected. That's one of the things that when we pass legislation, it's not that we do it with bad intentions or we do it in a malicious way.

**Mr Bradley:** That's just when you're dealing with the teachers.

**Mr Mazzilli:** Let's talk about the teachers while we're at it. When you look at the grade 3 testing, was that malicious? I was worried about it last year. My daughter was doing grade 3 testing and last week I got the report back: middle of the road.

**Mr Bradley:** She needs more help from her father.

**Mr Mazzilli:** She does. Father just absolutely has nothing to do with the homework end of it.

**Mr Bradley:** Thank goodness.

**Mr Mazzilli:** That's why it is middle of the road.

**Mr Mike Colle (Eglinton-Lawrence):** That's the problem; you're not helping.

**Mr Mazzilli:** That's right. Maybe I should be there instead of here.

**Mr Bradley:** There's an idea.

**Mr Mazzilli:** But some things that we make a big deal about—and I worry about some of the industry that will be affected by this legislation. I know the municipalities

are pushing forward with it, want it and want to recover some costs and that some industries have no idea what the effect is going to be on them and they've not built it into their prices. They likely have no way of recouping some of those costs, and industry with middle people, suppliers—I don't know how you're going to recoup some costs from people who are caught in between where product is shipped in and distributed by suppliers.

Having said that, I just hope we're not putting local businesses that produce things right here in Ontario, that distribute things right here in Ontario, at a disadvantage. Again, I look at the newspaper industry, and I've heard over and over again, not from that industry but from other people when it comes to environmental issues, that it's our appetite for consumption. We can sit here and talk about all the wonderful things we should be doing and we don't do them ourselves. I'd be the first one to confess that I don't, yet I'm expecting others to take the lead and I'll go on my mantra about packaging. Notice how you get the newspaper at your door sometimes and it's in a plastic bag so the poor raindrops don't get on it? I think that's somewhat disgusting, personally.

1750

**Mr Bradley:** You can reuse that bag.

**Mr Mazzilli:** There are too many bags to reuse.

You can go down to the cafeteria in this building, and there's all the wonderful packaging, and we all take them up to our offices, and then we're talking about making industry pay. I wonder, if the end user had to pay, how we would feel about it. If you had this debate about whether it's reusing or garbage—you've heard the debates in your communities, the municipalities talking about charging \$1 a bag or 50 cents a bag and the uproar and uprising when those discussions take place. We've all heard them. We've seen local councils try those methods and they've floated those balloons. They don't work well because citizens obviously don't want that.

What we try to do, obviously, is build it into where industry picks it up. We hope that they pass it down and achieve the same thing so that we're not affecting the bottom user and trying to collect it through industry. I'm not so sure it's going to work. In today's global environment of business there are those that are going to be affected that are local businesses and ones where it comes from elsewhere that won't be paying their fair share, if you will.

So I support the intent and I still don't know the outcome of this legislation. I just wish the users, the municipalities and the province good luck.

**Mr Bradley:** Would that the LCBO would follow the example of the Brewers Retail of Ontario. My worry is that now that you're going to privatize the LCBO by allowing them these stores—

**Mr Mazzilli:** That's Chris Stockwell.

**Mr Bradley:** I noticed that Mr Stockwell, the Minister of Labour, now candidate for the leadership, has expressed his concern about the lack of accountability of the LCBO, but I think that could be made worse. If you allow the privatization of the LCBO, you allow all these

other stores to be privately owned—I know, at the risk of being a bit provocative, that those same people sometimes show up at fundraisers, when you're talking about privatizing something.

I ask the government members whether or not they believe the LCBO should follow the example of the Brewers Retail of Ontario. One of the reasons the Brewers Retail is so successful is that it has a monopoly, yes, and is able to take its goods in, take its containers in, take its packaging in, and deal with it appropriately. In many cases it's a matter of reusing the container, in some cases it's a matter of recycling a particular container where it happens to be a can, and of course there's the packaging itself, the boxes themselves. I think the Brewers Retail has set a good example and I'm wondering if the government members are intent upon forcing the LCBO to do the same. Perhaps Minister Mazzilli would comment on that.

**Mr Mazzilli:** That'll be a later debate.

**Mr Bradley:** The cat's got your tongue. Either that, or Joe Spina's got your tongue, because I saw a note go over. You were really good. You made a good speech.

**Mr Mazzilli:** Brewers Retail is in a unique position: two or three distributors and all the product goes back. If others in the industry were so lucky, we could reuse more product.

**Mr Arnott:** I think there's been a good deal of helpful debate on this. I hope we can move forward and vote on this amendment now.

**Mr Bradley:** I'd be interested in what Mr Mazzilli has to say. I'm intrigued. I'm spellbound.

**Mr Colle:** I thought he was going to propose an amendment. We're waiting for his amendment. Can the LCBO be expected to—

**The Chair:** Further debate? Seeing none, I'll put the question on Mr Arnott's motion.

All those in favour? Opposed? The amendment carries.

Any debate or amendments to sections 34 through 39? Seeing none, I'll put the question. Shall sections 34 through 39 carry? Carried.

**Mr Arnott:** I move that subsection 40(1) of the bill be amended by adding the following clause:

“(h.1) providing that section 33.1 does not apply if criteria specified by the regulations are satisfied;”

I'll give an explanation quickly. This motion creates a new regulatory authority related to the new section 33.1, which we just passed, which exempts the brewers from the blue box program developed by the WDO and the payment of associated fees. The regulation will set out criteria which Brewers Retail Inc must satisfy in order to “loss” their exemption. The criteria may be as follows: if the Brewers Retail Inc packaging system falls below 75% diversion from landfill, the criteria of the regulation have been met and thus the exemption is no longer valid.

**Mr Levac:** I have to ask this: why 75% when it's already at 97%?

**Mr Arnott:** We want to make sure that 75% is the minimum threshold.

**Mr Levac:** So you're saying a minimum threshold for any other—

**Mr Arnott:** It's my understanding that the Brewers Retail maintain that currently they recycle about 97%. I don't think we have any independent audit of that, but that's certainly the contention of Brewers Retail.

**Mr Levac:** I really would like that watched carefully. I'm assuming the ministry has that as a minimum and that inside of that their expectation would be that Brewers Retail would maintain at 97% and that any other industry joining into a closed shop would be a minimum of 75%.

**Mr Arnott:** I think the ministry's position would be to encourage Brewers Retail to move to 100% as their goal.

**Mr Levac:** Thank you. Good set-up line, Ted.

**Mr Bradley:** I must confess a surprise at that 75%. I recognize how successful they are today and I'm frankly surprised that you would contemplate 75% when they have been so successful in achieving, as they would say, 97%. That seems to be a major step backward. I don't foresee it happening, but if there were different leadership at the Brewers Retail and a different philosophy that took over, or if you broke up Brewers Retail, for instance, who knows whether that could be achieved and who knows whether they fall to 75%. I'm quite surprised—I won't say shocked but quite surprised—at that 75% threshold.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour of Mr Arnott's amendment? Opposed? It is carried.

Shall section 40, as amended, carry? Carried.

Shall sections 41 through 44 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 90, as amended, carry? Carried.

Shall I report the bill, as amended, to the House? Agreed.

That being the case, we have completed our consideration of clause-by-clause of Bill 90. I thank the committee members.

**Mr Arnott:** I'd just like to thank the members of the opposition parties for their co-operation and also thank the members of our staff from the Ministry of the Environment, who have done a great job. It's been a pleasure working with all of you and we look forward to continuing this collegial approach on further bills before this committee.

**Mr Colle:** Moderation, moderation.

**The Chair:** In all things. Thank you very much, Mr Arnott.

This committee stands adjourned until 10 o'clock Wednesday morning.

*The committee adjourned at 1759.*





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Mr Keith West, director, waste management policy branch,  
Ministry of the Environment

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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Wednesday 28 November 2001

# Journal des débats (Hansard)

Mercredi 28 novembre 2001

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Municipal Act, 2001

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Loi de 2001 sur les municipalités



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## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 28 November 2001

Mercredi 28 novembre 2001

*The committee met at 1007 in committee room 1.*

## MUNICIPAL ACT, 2001

## LOI DE 2001 SUR LES MUNICIPALITÉS

Consideration of Bill 111, An Act to revise the Municipal Act and to amend or repeal other Acts in relation to municipalities / Projet de loi 111, Loi révisant la Loi sur les municipalités et modifiant ou abrogeant d'autres lois en ce qui concerne les municipalités.

**The Chair (Mr Steve Gilchrist):** Good morning. I'll call the committee to order for clause-by-clause consideration of Bill 111.

We will start with section 1. Are there any amendments to section 1?

**Mr Morley Kells (Etobicoke-Lakeshore):** I move that the definition of "economic development services" in subsection 1(1) of the bill be amended by inserting "collection and" before "dissemination."

**The Chair:** Do you wish to speak to it?

**Mr Kells:** Not particularly, unless somebody wants me to.

**The Chair:** Any comments? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? It's carried.

Shall section 1, as amended, carry? Section 1, as amended, is carried.

Section 2, any comments or amendments?

Seeing none, I'll put the question. Shall section 2 carry? Section 2 is carried.

Section 3.

**Mr Michael Prue (Beaches-East York):** I move that section 3 of the bill be amended by adding the following subsections. I understand from the clerk that it may be ruled out of order, but I'll move it anyway"

"Notice of change in costs

"(2) The province of Ontario shall provide a minimum of six months notice of any proposed substantial change in policies or legislation that would result in an increase in the costs to municipalities of carrying out their responsibilities.

"Exception

"(3) Subsection (2) does not apply if the proposed change is to deal with an emergency situation.

"Funds from province

"(4) If a substantial change in policies or legislation will increase the costs to municipalities in carrying out

their responsibilities, the province shall provide the funds to the municipality to meet the increased costs in the amount determined by the Provincial Auditor and an auditor appointed by the Association of Municipalities of Ontario as being adequate for this purpose."

**The Chair:** You did receive sage counsel, as always, from the clerk. Under standing order 56, only a minister of the crown can direct provision of public funds, so I must rule this amendment out of order.

Which would then take us to amendment number 3 in your package.

1010

**Mr Kells:** I move that section 3 of the bill be amended by adding the following subsection:

"Review

"(2) The Ministry of Municipal Affairs and Housing shall initiate a review of this act before the end of 2007 and thereafter within five years of the end of the previous review."

If I may, the rationale is rather obvious. Both municipal and business stakeholders have requested the provision of this type of review and the government is amenable to such provision.

**Mr Ted McMeekin (Ancaster-Dundas-Flamborough-Aldershot):** I agree with the parliamentary assistant that the review is in order and that people have requested it. I just wonder about the 2007 date. I'd prefer to see that, say, moved back to about 2004. I think to wait five years to review an act as important as this is problematic. I don't know how it works procedurally, but I'd be prepared to amend it to 2004.

**The Chair:** Perhaps before Mr Kells responds, unfortunately, operating as we are in a time allocation motion, amendments from the floor are not in order, but I appreciate your comments.

**Mr McMeekin:** Oh, OK. It's better than nothing.

**Mr Kells:** I won't prolong it, but it's very basic. First of all, you had some concern leading up to this bill that we weren't consulting over a long enough period, and now you want to shorten the period after the bill comes into play.

**Mr McMeekin:** It would be three years.

**Mr Kells:** I think the timetable we suggested is fair.

**The Chair:** Further debate? Seeing none, I'll put the question on Mr Kells' amendment. All those in favour? Opposed? It is carried.

Shall section 3, as amended, carry? Section 3, as amended, is carried.

There is a new section 3.1, and that would be Mr McMeekin.

**Mr McMeekin:** Yes, I'd be pleased to move that, Mr Chairman. Is it normal for me to read it? I think you can all read.

**The Chair:** Yes. You don't, however, have to read the titles. For example, it says "Matters affecting municipalities." You would start at "3.1(1)."

**Mr McMeekin:** I used to own a bookstore, so I can read.

I move that the bill be amended by adding the following section:

"Matters affecting municipalities—general principles

"3.1(1) In developing policies or making changes to legislation or regulations that affect municipalities, the province of Ontario shall have regard to the following principles:

"1. Municipalities shall not be amalgamated or restructured without the consent of the municipalities affected.

"2. An amalgamation or restructuring shall be carried out in a manner that reflects the decisions of the municipalities affected.

"3. The province of Ontario shall consult with municipalities and other persons or bodies having an interest in municipal issues in relation to any proposed legislation or regulations.

"4. At least 12 months' notice must be given to municipalities of any potential policy or decision that will have the effect of increasing the responsibilities of municipalities or the costs to municipalities of carrying out their responsibilities."

**The Chair:** Do you wish to speak to your amendment?

**Mr McMeekin:** I do indeed, Mr Chairman. I just want to say by way of overview that nothing is more important to municipalities, particularly when we're talking about the need to bring in legislation that reflects a new era, a new partnership predicated on trust and respect, than actually giving some semblance of trust and respect throughout the legislation. Nothing is closer to—

*Interruption.*

**Mr McMeekin:** You see, there's a bandwagon coming on this side. Can you hear it?

**Interjection:** You missed it.

**Mr McMeekin:** Nothing is closer to the hearts of municipal leaders and the people they represent than the form, style and structure of their municipal governance. I would hazard to also add that nothing is closer to a constitutional issue than municipalities actually having the right to decide for themselves, speaking from some painful experience. I happen, as you may recall, to have had the privilege of serving as the mayor of the wonderful town of Flamborough, the only town in all of Ontario that actually lowered local taxes six years in a row without gutting services. We did that by building on our strengths and using a whole lot of volunteers and partnering with

others, including people in the private sector where that was appropriate, to do it together and achieve together what we couldn't achieve apart. I'm a big believer in that.

The people in my particular municipality and a number of others around the great old city of Hamilton—

*Interjection.*

**Mr McMeekin:** And now the great new city—voted in overwhelming numbers to not embrace amalgamation. We in fact asked the government not to get involved in that, not to send in a commissioner. We had in my municipality I think a 54% turnout at a plebiscite vote where people had to prove they were on the voters' list and produce ID. It wasn't one of these things where if you had Aunt Nellie coming in from Scotland she could vote as well just to show that she loved you. So we had a 94.6% rejection of that. There have been a number of subsequent difficulties with respect to the arbitrariness that was associated with that and, dare I suggest, some other amalgamations.

What I'm pleading for here and what we're pleading for in this resolution is that we breathe some real life into the rhetoric that's out there about treating municipal government as a bona fide government, a government capable and those elected to represent the people capable of making decisions, and that's part of the accountability that ought to be flowing with this legislation. Simply put, municipalities, if we are to live the spirit of the thrust of Bill 111, should not be amalgamated without their consent. I think in hindsight that is perhaps even the current government's position, having experienced some unpleasant results from forced amalgamations.

I could spend a lot of time going on, elaborating the 15 key areas where life is not as bright and as sunny as it was before amalgamation, but I won't do that.

The other issue that's of concern of course is the fear that downloading, be it revenue neutral or otherwise, or even uploading—I want to be fair—should be done very much in the context of this consultative partnership that we're all giving a fair bit of emphasis to, at least rhetorically, as we talk about this bill. So I guess my challenge to the government and to members here and to our colleagues in the Legislative Assembly is let's actually practise what we claim we're preaching, and hence the resolution before us this morning.

**Mr Kells:** My only comment is that I hear the honourable member. I would not like to refer to his being here as an unpleasant result, but that could be the case. As you know, and it'll be said probably many times throughout the day, we are working on a memorandum of understanding with AMO and I'm certain that this subject will be debated in detail at that time and will be reflected probably in the wording that will be in the MOU. So on that basis of course we can't support your amendment.

**Mr Prue:** I'm going to be supporting the motion, notwithstanding the memorandum of understanding, which of course should reflect that. If the memorandum of understanding does what it's supposed to do, it will

acknowledge the existence of the municipalities, it will acknowledge them as a full partner in the governance in this province, although at a different level. It would seem to me to be untoward not to provide the protection of the municipalities through a section of the act, so that by whim or caprice of a future Minister of Municipal Affairs or a cabinet a municipality does not find itself in the unfortunate position of so many municipalities over the last few years.

I will tell you, gentlemen, if you knock on doors even to this day in East York, you will get a frosty response as to what happened, how it happened and the results of what happened. If municipalities need to amalgamate, and some have chosen to, there have actually been some good cases where it worked, but that's usually when co-operation and cool heads and time and public support have come together to do it. When that isn't there, I think the municipalities should be protected. Mr McMeekin is exactly right: if it's going to be in the memorandum of understanding anyway, why shouldn't it be in the legislation?

1020

**Ms Marilyn Mushinski (Scarborough Centre):** I can't resist. I'd like to speak. I really would like to ask the Chair what he feels about this.

Last night I had the honour of being made an honorary patron of my community. The local councillor was the guest speaker, and the question of amalgamation actually did come up. I was quite surprised: this local councillor is known to have a slightly different coloured stripe from me, but he was actually espousing the virtues of amalgamation in terms of how we were able to amalgamate six fire departments into one, and how six municipalities were all competing with each other to get business internationally and amalgamation has been able to combine the forces to attract business, which of course helps the economic development of the greatest and largest city in Canada, which is, after all, the economic engine of the country.

Clearly, I don't share the sentiments of some around this table. The residents who were present last night are all from Scarborough, they know they're from Scarborough, they know what the Scarborough community has done for them and will do for them in the future, and they don't feel disenfranchised by amalgamation. So I couldn't disagree more with Mr Prue than what was substantiated to me last night at a community meeting. I will not be supporting this amendment.

**Mr Mike Colle (Eglinton-Lawrence):** It's interesting, if amalgamation has been so good, that this bill blocks further amalgamation in the 905 area or throughout the province where there are regional governments. If amalgamation is such a panacea and it's been so good and has a track record in Hamilton or Wentworth or Ottawa or Victoria county, then my question to the government, and maybe to the staff who prepared the bill, is why does this bill block further amalgamations in the 905 area and the other regional governments that exist? Could anybody answer that?

**Mr Kells:** It's not a matter of whether we can answer it; it's a matter of whether we want to answer it. We made our position known just before you arrived, and we are going to stand by that. We appreciate the thrust of your amendments, but we do believe that in the memorandum of understanding this will have a great deal of debate and possibly what you're talking about will be reflected in that memorandum. We're prepared, as a government, to stand behind whatever comes from those discussions. So we won't be supporting it, as I mentioned prior to your arrival.

**Mr McMeekin:** Just quickly in response, I would say for the record that if there's to be a memorandum of understanding, that's what the act is. It defines our understanding of the relationship between the province and its constituent municipalities. I would add to that, for the record, that AMO doesn't determine and ought not to be able to determine for a municipality what that municipality might choose to do, with all due respect to AMO—I have some good friends there. Picking up on my colleague opposite, I suppose if pushed hard enough I might even be able to find a Liberal somewhere in Hamilton-Wentworth who supported the amalgamation. But AMO ought not to be determining for any municipality, and I'm assured they don't want to do that.

In my municipality, you may recall there was a three-fold government promise that we would see streamlined, more efficient and effective government; we would see not just the same services but better services; and we'd see both of those with lower costs and lower taxes. The impact in my former municipality has been to distance citizens from their leaders. Taxes have shot up 13.8%, when we were all told by your independent expert consultant at the time that they would go down. We've seen a deterioration of the relationship between citizens and their government. Taxes have gone up over 30% in the rural areas. The cost of cutting grass under the town of Flamborough—small point, but significant—was \$908 a hectare; now it's \$2,800. We've had more break-ins in municipally owned properties in the last year than previously in municipally owned properties in the last quarter century. Why? Because one of the first things the new city did was set about the process of dismantling that historically and culturally effective reliance on volunteerism, the very heart of the community. We've now got major fights between full-time firefighters—the full-time union culture in Hamilton—and our historic part-time volunteers to the point now where part-time volunteers are being driven out of the ranks. It's just not fair.

So there have been a lot of negative impacts. I suppose if you were to cast long enough and seriously enough in Hamilton, even in the suburban communities, you might find one person, like my good friend Marilyn has, who might support it. I'd be quite willing to adjourn this meeting and go door to door in Flamborough, Aldershot, Dundas—

**Mr Prue:** I think you should go door to door in Scarborough, because I don't believe—

**Mr McMeekin:** But you see, you're just another unpleasant result, Michael. Anyhow, enough said.

**The Chair:** Further debate? Seeing none, I'll put the question on Mr McMeekin's motion. All those in favour? Opposed? The amendment is lost.

Sections 4 through 6: are there any amendments or debate? Seeing none, I'll put the question. Shall sections 4 through 6 carry? Sections 4 through 6 are carried.

Section 7, Mr Prue.

**Mr Prue:** I would move that section 7 of the bill be amended by adding the following subsection:

"City of Toronto

"(6) Despite subsection (5), the City of Toronto may exercise its powers under sections 222 and 223 to override a special act even if the special act specifically or by necessary implication precludes the exercise of those powers."

That's a little bit of legal jargon. What that means in a nutshell is that the city of Toronto would have the same express authority as every other municipality in this province to set its own ward boundaries.

**Mr Kells:** My only comment, and Mr Prue knows the history as well as I, is that it was not very long ago that the city of Toronto council, given direction by the province, had the debate about how to carve up what we would call a federal or provincial boundary into two. In many areas, mine included—being a Toronto member, I feel very strongly about this. We tried to get them to carve it up in my area geographically. That made sense to the population involved. Of course they carved it up to suit a political timetable and a political grouping of people on the Toronto council. Be that as it may, we now have a situation where that has been done. It's been done by the council of the day. We're of the opinion that it would be better for the people now, being cut up the way they've been cut up and now familiar with these new boundaries, that that's the way they should stay. That's why we can't support the amendment.

1030

**Mr McMeekin:** I hesitate to get into this other than to say that I find it ironic that the member who just spoke was intimating that if the Metro government had only listened to the people, it would have had the right boundaries. I suppose that echoes part of what I was saying with the earlier resolution about expressing a willingness to listen to the people through the—

**Mr Kells:** This time you agree with me.

**Mr McMeekin:** It's written in the Good Book that consistency is the hobgoblin of a feeble mind. So we can have debate about who's there. I just found it ironic that the very argument I was making, which you couldn't find it in your heart or your mind to embrace, is now being fed back to us based on your experience, which I treasure and honour. I wish they had listened to the people, as you were urging. I was simply urging the same on the amalgamation and downloading issue.

**Mr Prue:** I really feel I have to speak to this. The city, in its forced amalgamation, was allowed 56 and then 57 members, and carved it up on the old boundaries Metro had chosen, divided it up based on the Metro boundaries. The province then, in its wisdom, came along and

determined that there were too many members of the council—I think that was the whole argument, that there were too many members—and then chose the federal-provincial boundaries, and told the municipalities they had to carve those in half.

There was no choice. There was a lot of bitterness at the Toronto council at the time that the province had unilaterally reduced the number of members, for no reason at all other than that the mayor was often quite obstreperous to the Premier. We couldn't think of any other reason it was done. There was no member of council advocating it. There was no member of council who voted for it.

Then the province allowed the municipalities to cut them in half. There was a lot of debate. I will agree that the Etobicoke resolution was not a good one. I, in fact, voted for the other side. I think Councillor Holyday made a very good point as to where the boundary should be. The 427 was clearly a better boundary than the one they chose. But that was the aberration of the 44. The others were almost all upon mutual consent. They were very logical. They followed main roads where the communities were carved in half.

The City of Toronto Act specifically precludes the city of Toronto from getting into this argument in the future. It will be an arbitrary decision of this council. The boundaries will change every 10 years, as the federal-provincial boundaries change. Communities will be cut up after they've got used to being together. It makes absolutely no sense. If the province wants to say there are 44, then tell the city there are 44 and leave them to do it.

To force them to change every time the province or the federal government changes is illogical. It is illogical to them. They cannot and should not be forced to do something no other municipality does. No other municipalities told you, "We'll have 55,000 people per councillor." Not one. If you do that in North Bay, there'll be one person. If you do that in all of these other places—where Mr Miller comes from, how many? You'd have, for your entire constituency, maybe two councillors. That's what you'd have.

What you're doing to the people of Toronto is patently unfair. I am simply asking that they have the same rights as citizens as every other citizen in this province.

**Ms Mushinski:** Have you seen the size of Howard Hampton's riding?

**Mr Prue:** They'd have two. No, they'd only have one. I think he only has about 55,000 people.

**Mr Colle:** I would certainly urge support of this amendment, because I don't think Queen's Park always knows best. In this case the Municipal Act is talking about giving municipalities more autonomy and treating them more like the adults and governments they are. For Queen's Park to basically override or impose its will on the type of representation, the number of representations, is totally out of whack with what the people, I think, of Toronto have experienced.

If you look at Toronto, it is a city with a lot of older, established neighbourhoods that go back beyond, you

might say, some of the provincial practices and provincial inventions, and have to be respected. This does not respect the fact that there are established neighbourhoods and the boundaries have nothing to do with what are—it's not even the province—essentially federal boundaries. If you try to equate to these federal boundaries every time, without giving any kind of say to local people on how they feel they can be best represented—because that's what it's all about. I think the people who are paying taxes and are involved in community groups know what's best for their community.

This is, again, that heavy-handed approach that this government has taken in the past and continues to take in this bill, which in essence says, "We know best. We will tell you what the boundaries are going to be and when they'll be changed, and you don't really have a say in it." Supposedly, the reason you created this megacity was to give Toronto more strength, more power, the ability to go on its own more, but in key situations, over and over again, they really don't have a say in basic boundaries or basic representation.

I'm sure you can criticize any municipality. There isn't one municipality in Ontario where there isn't some debate about boundaries. That's the nature of the beast; people debate boundaries. One area gets an advantage; one councillor gets an advantage. All that's really needed are some general parameters about representation. But when you get into micromanaging boundaries and what councils can do, whether it's a city like Toronto or whether it's Wawa, local ratepayers and local political practices are usually the ones I would defer to, given the fact that there are all kinds of rules.

This whole legislation is about rules and regulations. They still can't even go to the washroom in a municipality unless they get provincial approval. So it's not as if there is a lack of provincial guidelines; there are probably still way too many in this case. I think that this amendment basically talks about being straightforward with municipalities, saying, "You have responsibility. We respect your ratepayers, we respect your traditions, and we won't interfere and impose things on you any time we want to."

This is one motion that is related to a number of other motions and aspects of this bill that I'll talk about later, where they're still even telling municipalities that the Minister of Finance has to approve every word on a tax bill. You can't have it both ways. I just think there's some kind of middle ground here where you have your rules and guidelines. I think the province is right in having those overriding guidelines but not to the point where there's this constant imposition. I don't see the rationale for that and how it makes for good local government.

Remember, you're never going to get perfect government. I guess the only place they had perfect government was in the Soviet Union, where it was totally centralized, a command system. Everything came from the Kremlin. If we ever did an analysis of that type of government, you'd see that it was basically a disaster for everybody.

That's when you try to impose things always from on high, because what happens is that you don't connect with local needs. Municipalities are about connecting with local needs. That is what I think this motion is trying to say and trying, at least in some small way, to mitigate.

We can't always say that Queen's Park is right. I really wonder when this government will admit that Queen's Park has been wrong. If you talk to some of the councillors or mayors who are not intimidated, they will tell you over and over again where Queen's Park has made mistakes you wouldn't believe. I predict that the biggest thing you'll see is the Ministry of Municipal Affairs reversing the forced amalgamation in Victoria county. It was a disaster for Victoria county.

1040

So rather than dictate boundaries using federal boundaries, basically, which certainly in my riding, I know, have very little to do—I think I've got a mix of four municipalities within my riding now. There are still four different bylaws, by the way—that hasn't changed—four different sets of building codes, four different sets of how they pick up garbage. In one section I've got a private contractor, and then I've got a public contractor. You can ride through one section of my riding and there are stop signs at every, you might say, four-way stop, and then in the other section of North York there aren't. So you're driving through, supposedly, one riding or one city, and it changes completely.

Amalgamation is supposed to cure all this. The boundaries haven't cured that, even that small consistency. They haven't done anything about it. So rather than interfering in what municipalities should do, maybe you should work with the municipalities and say, "Listen, why don't we have a standard? where at every four-way stop intersection there might be some standard." It should be the provincial government's job to facilitate the little things that count. But most of the time has been spent on dictating what I think is a political agenda, which is very punitive in those cases, or for the good of Queen's Park. It's not good for local citizens who are trying to drive safely through a neighbourhood or who worry about who's going to fix the pothole, because now when the pothole has to be fixed, I've got to phone somebody in Etobicoke. They don't even know where the street is, because it hasn't caught up to this great plan they had for this megacity. We're getting poorer services, boundaries that don't match the neighbourhoods, and in essence we're getting less service for our tax dollars we pay provincially or locally because of all this bureaucratic creation called amalgamation, which has basically turned out to be a annuity plan and a pension plan for political consultants and lawyers and the likes of Professor Harry Kitchen out of Trent.

These guys have become rich. I'd like to see what they've banked over the last five years with this government. I hear Professor Kitchen is messing things up in Muskoka now. I warn people in Muskoka, watch out. See what he's done in Kawartha and Victoria county. I'd

actually rather have Morley Kells up there talking to people in Muskoka than that Professor Kitchen. I would trust Morley because he's been there on the ground. The government hires these consultants who supposedly have a university degree in municipal government, but just look at the mess he created in Victoria county. I'm going to trust Professor Kitchen up in Muskoka?

To my colleague Mr Miller, I'd say, "Watch out. If you see that guy coming, I'd run for the hills." Because municipal services, and that's what we're talking about here, are about providing good local hands-on government, where people feel they can knock on a door and yell at the councillor. They know the work foremen. They have a sense that someone is actually listening to them and that when they pay their tax dollars, they're getting someone to answer the phone and they don't get into some kind of computer rollout here on what policies are. They want to talk to real people.

That's why I support this motion. It's about trying to get municipalities back into the hands of the people and out of the hands of the likes of Harry Kitchen or whatever his name is, who probably has never fixed a pothole and probably doesn't even know what a pothole looks like.

**Mr Kells:** If I may, I'll try to keep my comments somewhat shorter than the comments that I've been listening to. I would like to mention, when Mr Prue made some comments about Toronto being a unique place, that I think that's exactly what we're trying to understand here, and that's why our rejection of this amendment really reflects the fact that Toronto is unique, as many delegations have come before us to tell us.

I have to take a little umbrage at the comparison of anything this government is doing or has done to the Communist system in Russia in the past. I think that's a bit of a stretch by anybody's judgment. I'd like to have it on the record that we reject any kind of comparison. Queen's Park can be, I assume, dictatorial: from 1985 to 1995 there were a number of dictatorial actions taken. I'd only have to comment on Rae days or something of that nature.

Anyway, I don't want to get into any kind of argument about that because it's off-topic. I think the honourable member just got a little bit off-topic when he started to drift around the province. As to his reference to micro-managing, here's a point where we're not micromanaging; we want to just leave it the way it is. But finally, if it's any solace to the member who moved the amendment, down the road the city of Toronto can debate geographical boundary changes. When they come to an agreement, they can bring it to the minister of the day, and if it makes such eminent common sense, it's possible a reg could be passed to recognize the debate done.

The point the provincial government is making is, you do the debate and then we'll talk with you after that, after you have a plan. If it's such a burning point, take the time to have the debate at the city of Toronto, then bring the map up and the minister of the day will be happy to take a look at it.

**The Chair:** Further debate? Seeing none, I'll put the question on Mr Prue's motion. All those in favour? All those opposed? The amendment is lost.

Shall section 7 carry? Section 7 is carried.

Are there any amendments to or debate on sections 8 through 10? Seeing none, I'll put the question. Shall sections 8 through 10 carry? Sections 8 through 10 are carried.

Section 11: the first amendment would be yours, Mr Prue.

**Mr Prue:** I move that subsection 11(1) of the bill be amended by adding the following paragraphs:

"11. Affordable housing.

"12. Health, safety, protection and well-being of people and the protection of property.

"13. Natural environment.

"14. Nuisance, including noise, odour, vibration, illumination and dust.

"15. Municipal land use planning."

Numbers 12, 13 and 14 were in the original draft document the government proposed, and then it had them removed. After having heard the debate, I'm not sure why they were removed. There were some cogent arguments made by some of the municipalities that they should stay in there.

The "health, safety, protection and well-being of people and the protection of property" would tie in very well with the later sections relating to the government's ability to control such things as spraying. There was considerable argument from the city of Mississauga, from Caledon, from AMO and from other sources that the municipality should have that control over pesticide use, such as that which was granted in the Hudson, Quebec, case.

As to the "natural environment," it logically follows that the municipality should have some control over its natural environment.

"Nuisance, including noise, odour, vibration, illumination and dust"—this has to go a long way around such things as buildings and building control; illumination of signage, especially in urban areas; odour or noise from factory pollution. All municipalities have bylaws that affect that. It's nothing going into the provincial legislation.

**1050**

Those three were in earlier recommendations. For the life of me, I have not heard an explanation why they should have been removed.

To go outside that little box, number 11, "Affordable housing," municipalities are in many respects getting into the affordable housing game. In fact, the province, in its wisdom, has seen fit to download a great many of the affordable housing units, some 29,000 in the city of Toronto, and in St Catharines, London, Windsor, Ottawa. The municipalities now have that jurisdiction and that control over affordable housing. They're going to have to start spending the money on it as well. If that is the decision, to give them the affordable housing, it should be in there too. Many municipalities are also starting to

build affordable housing as part of the mandates of the municipalities. In the absence of any other program, they're trying to do whatever they can.

The last one, 15, "Municipal land use planning," seems to me to be quite natural as well. Municipalities, by and large, especially the more mature and larger ones, have whole planning departments, planners, official plans. It's only logical that municipal land use planning also be part of their mandate. It's something they do. It is of course subject to the Ontario Municipal Board, which is a provincial agency at arm's length. If municipalities are going to be required to do this type of work, then it should be clearly set out that this is within their mandate.

I am asking that these five be included, two of them because it's obvious the municipalities are doing it, and three of them because they were in the earlier draft document, made eminent sense, and there has been no cogent argument whatsoever as to why they were removed.

**Mr Kells:** I appreciate the thrust of the amendment. We would like to point out that the current Municipal Act doesn't deal with every service or program that involves municipalities. Rather, the entire array of their responsibilities is spread out over some 90 pieces of legislation administered by 15 ministries. We've now narrowed it down to the 10 spheres. I don't think I'll bother reading them, because we'll probably be touching on them again before the day is out.

In addition to the provisions affecting these matters in the current act, there is already a considerable amount of pertinent provincial legislation in place. Because of the concern about duplication between the province and the municipalities and the potential for over-regulation for business and ratepayers, it was decided not to carry forward these powers in the form of spheres. Rather, they are set out as specific provisions but in a considerably more modernized fashion. I asked my learned friend beside me what that meant. It means more modern language as opposed to the archaic language of the old act.

Maybe even more important, it's my understanding that AMO supports what we have done here in the act. The municipalities themselves had concerns with the limits on these sections, so we removed them as spheres.

We are really responding to what we heard in consultation, and as a result of that, we won't be supporting the amendment.

**Mr Colle:** I'm a bit puzzled. It astonishes me that AMO would not support this—or maybe what their rationale is. Some of these things—I'm not sure if the parliamentary assistant was saying they can make bylaws pertaining to these areas through other pieces of legislation, under the Planning Act etc. I'm not sure. I can't see how you can prohibit municipalities from making bylaws dealing with, for instance, noise abatement. This is one of the most constant thorns that local councillors and ratepayer groups get. Maybe the staff could answer that.

**Mr Kells:** Well, I could answer that it's a sphere. It's already in there.

**Mr Colle:** Can they do it under other sections?

**Mr Peter-John Sidebottom:** Sections 128 and 129.

**Mr Colle:** So they can already do it in this act in another section?

**Mr Sidebottom:** Right.

**Mr Kells:** No, in the new act.

**Mr Sidebottom:** In the new one.

**Mr Colle:** Yes. But I'm saying in the act before us.

**Mr Sidebottom:** Yes.

**Mr Colle:** Yes. I just thought by not putting them here, that would preclude them, and that's why it just doesn't make sense. So they can essentially make bylaws for all these areas under other sections of this act.

**Mr Sidebottom:** That's correct.

**Mr Colle:** Yes. That answers my questions.

**Mr McMeekin:** I have just a couple of points. I will support this because I think these somehow have to be worked in, and maybe that's part of the ongoing consultation that needs to happen in terms of the specifics.

I just note, as one who goes to and stays for the duration of the ROMA conference, the OSUM conference, the AMO conference and listens intently to municipal leaders and has all kinds of time for AMO and those who work for AMO and its madam president, who happens to be a good friend and speaks her mind quite candidly, that if the measure of inclusion in this act had any resemblance even close to what AMO wanted, I can think of at least 50 things that should be included that AMO would proclaim are missing. And if you want, I have a list in my office of missing parts that I'd be quite pleased to read into the record, various things that AMO has called on.

We've also had a chance to review some of the material that various organizations have presented in the consultation process, although that's not been generally available even though we've asked for it. It's always fascinating when we hear conversations about consultation but can't readily access the consultation material. But that's by way of segue.

I want to ask a specific point, though. I had raised the issue, Mr Chairman, you may recall, and I think you were somewhat sympathetic at the time, or at least appeared to be somewhat sympathetic, to getting an answer with respect to the whole issue the city of Burlington raises around pesticides and the potential—I think the mayor of Caledon, Her Worship, was here and spoke about that as well, as I recall, about pesticides and control of pesticides and the municipality's fight to exercise control over that. There was some reference to staff getting some information back as to which would take precedence. Would the Municipal Act be subservient to the Pesticides Act and were there enough controls within the new proposed Municipal Act to allow municipalities that had some concerns about certain chemicals being sprayed to control their use and abuse?

That's the kind of issue, Michael, that I think really gets covered off in section 12, if it's included, and sadly the kind of issue that gets missed in the absence of that sort of reference.

So I raise that. I don't know if there has been any more information on that. There was the Quebec Supreme Court decision, you may recall, that municipalities do have the right to control, and I was wanting to be at least as progressive as la belle province and wondering whether we were putting those same kinds of provisions in place.

**Mr Kells:** It would probably be a good idea to be as progressive as Quebec, but Quebec doesn't have a Pesticides Act, so they're not quite as progressive as Ontario in that regard and that's why the Supreme Court decision is unique in that regard.

If you recall, when Her Worship the mayor was here, her concern, as I understood it, is that we got it down to, if you will, the micro-area, which was not necessarily pesticide use by municipalities; it was pesticide use by the public because of the instructions that were on the product. Now we're starting to move into packaging, a different kind of question.

We've tried, as I say, to handle this the best way we can. I appreciate what you're bringing forward. It's certainly something that, as we continue to discuss this whole new act with AMO, and for that matter with any municipality, if it can be described or enunciated as a serious problem—I'm not saying—if there's concern, there's concern—we could probably take some kind of steps later on.

1100

**Mr McMeekin:** I appreciate your reference to Her Worship, but you may recall His Worship Mayor MacIsaac was in and raised the concern in a much more general way around the municipality's ability to monitor, regulate and control—

**Mr Kells:** This actually came up too in our smart growth consultations, so these sort of debates have a life of their own as governments are consulting in different ways with the public.

I guess a general answer is it hasn't been impressed upon us that strongly that would indicate that we're going to change our act, but we certainly are aware of the debate and I think it will be monitored in the months ahead.

**Mr McMeekin:** I'll accept that.

**The Chair:** Further debate? Seeing none, I'll put the question on Mr Prue's amendment. All those in favour? Opposed? The amendment is lost.

**Mr McMeekin:** We've got to have one breakthrough today.

**Mr Kells:** I move that subsection 11(2) of the bill be struck out and the following substituted:

"Spheres of jurisdiction, lower and upper-tiers

"(2) A lower-tier municipality and an upper-tier municipality may pass bylaws respecting matters within the spheres of jurisdiction described in the table to this section, subject to the following provisions:

"1. If a sphere or part of a sphere of jurisdiction is not assigned to an upper-tier municipality by the table, the upper-tier municipality does not have the power to pass bylaws under that sphere or part.

"2. If a sphere or part of a sphere of jurisdiction is assigned to an upper-tier municipality exclusively by the table, its lower-tier municipalities do not have the power to pass bylaws under that sphere or part.

"3. If a sphere or part of a sphere of jurisdiction is assigned to an upper-tier municipality non-exclusively by the table, both the upper-tier municipality and its lower-tier municipalities have the power to pass bylaws under that sphere or part.

"4. An upper-tier municipality does not have the power to pass a bylaw that applies within one of its lower-tier municipalities under a sphere or part of a sphere of jurisdiction to the extent that this act (other than this section) or any other act confers power to pass the bylaw on the lower-tier municipality.

"5. A lower-tier municipality does not have the power to pass a bylaw under a sphere or part of a sphere of jurisdiction to the extent that this act (other than this section) or any other act confers power to pass the bylaw on its upper-tier municipality."

**The Chair:** Do you wish to speak to this?

**Mr Kells:** Well, it's a technical clarification.

**Mr Prue:** Can you tell me—I notice that number 3 is the change.

**Mr Kells:** If I may, this section of the act maintains a status quo on existing division of powers between tiers. This change streamlines the language of this section as set out in Bill 111 and clarifies that the lower tiers have exclusive authority in spheres which have not been assigned to the upper tiers. So if you haven't given it away, we haven't given it away, it still belongs to the lower tier.

**Mr Colle:** I think this is very problematic. It's very difficult to do. I can empathize with the government's attempt to try and clear this up, because right now we have an example of this taking place in King township where there's a huge legal battle between the lower tier, King township, and the upper tier, York region, over a sewer. The present legislation basically has been over-ridden by the upper tier. I think it's being challenged in the courts by the lower tier. So the lower tier is spending all kinds of money trying to get this clarified.

I don't know whether this will end that type of dispute in the future. I'm not sure whether anybody is cognizant enough about the present situation in the region of York to see whether this would resolve those disputes from taking place.

This is in regard to the York-Durham trunk sewer that is being opposed by King township. In the past, historically the local township has had jurisdiction over this with their local planning authorities, etc, but it has been overruled by the region. The region is now forcing the hook-up to the York-Durham sewer against the will of the lower tier, and the lower tier is going to court, etc. Would this in any way resolve that type of dispute?

**Mr Kells:** I don't want to get this government's amendment too far dragged into a particular—

**Mr Colle:** I'm just saying whether it tries to clarify things like this. That's what I'm getting at, because I can

see this replicating in other areas, whether you've thought about that kind of dispute in terms of looking at it. Now might be a chance to essentially clarify that, because I think it's a good case in point that in real life, hopefully, this legislation is taken into consideration. I'm just using that as an example that now is a chance—you're looking at it—to maybe ensure that gets cleared up by legislation before this happens again in other jurisdictions.

**Mr Kells:** It's our best attempt and we do feel that section 1 does speak to some of your concerns. As I said, I don't want to get into that argument—

**Mr Colle:** Yes, none of the specifics, but I also—

**Mr Kells:** I do appreciate your comment that we've tried. I guess it's not for the politicians to question the people who have to write this material, but I would say that we're trying to do entirely the right thing and if it doesn't do the trick, then I'm sure it certainly will be brought back to us in any number of ways.

**Mr Colle:** It's very challenging.

**Mr McMeekin:** This appears to make some sense. Those that are exclusively upper-tier powers ought not to be impinged by and the lower tier impinged by—in fact arguably it might clarify some of the concerns that my colleague Mr Colle is talking about. There's an old expression that tolerance begins not at the point of similarity, but at the point of difference. You may recall, as I do, that the mayor of Burlington raised some specific concerns about economic development historically—by the way, they do it very well in the city of Burlington—being assigned to the upper tier. So we are going to do this—

**Mr Kells:** Their assessment base is good too.

**Mr McMeekin:** That's true, and that always helps, as one who's been there. That having been said, I think as we move forward with this we'd want to be careful about what we then designate as exclusive, Mr Kells. I would want some assurance, for example, that we weren't in essence feeding the hand that might end up biting some of the very good things that have existed. I don't mind the region of Halton or other regions, upper tiers, having involvement in and joint jurisdiction with respect to economic development, but I wouldn't want to rob those who are doing it well of their ability to continue to do that. If you're prepared to give us that assurance, I'd be prepared to support this government motion.

**Mr Kells:** I'll do the best I can. Bear in mind, as I said, I speak not necessarily for the minister all the time but at least with him.

The issue here is that we did not want to get into the existing division of power. It was a conscious policy decision and that's why this section in the table reflects the status quo. Any municipality that raised a concern during the hearings on this, staff have confirmed that their provisions were accurately reflected in the act. So we feel that we've tried to handle the concerns as put forth by people like the mayor of Burlington. If down the road an example would be brought to us, it would have to be looked at, especially if the issue was in front of the

court. If we find that the act is inadequate, and we probably are going to need illustrations of that—it's far from me to sort of look ahead and see whether that's going to be the case or not.

So I appreciate your comment that you might see it in your heart to support it, and we'd appreciate if you would, but this is our best attempt, anyway.

1110

**Mr McMeekin:** Can I ask very specifically, then, because I notice looking at the paragraph 10, economic development, the regions aren't by definition included, there's the county reference and the mayor also raised that concern about language. Assuming that we were to pass this resolution, can you simply give me the assurance that that specific example that was raised would not be prejudicial to the good people in the city of Burlington, many of whom I represent provincially?

**Mr Kells:** I think we're dealing with some hair-splitting here and because this is the record, I'm not prepared to do that.

**Mr McMeekin:** You've said you want to affirm historically what's working and the status quo. I'm asking—

**Mr Kells:** Yes, and we feel that is the case.

**Mr McMeekin:** OK.

**Mr Kells:** If somebody can prove it isn't the case down the road, then that's what politics is about, and the legal argument.

**Mr Sidebottom:** The spheres are supplemented by—

**The Chair:** Just introduce yourself, sorry, for Hansard.

**Mr Sidebottom:** Peter-John Sidebottom, manager, municipal affairs. The sphere provisions are supplemented by additional powers, and if you look at sections 111, it talks in particular about Durham and Halton and Oxford and, in section 112, Peel as well, where it actually gives additional powers to lower-tier municipalities in those specific instances. Again, the sphere is attempting to capture the general provision and, where necessary, additional provisions specific to those municipalities have been added, so 111 and 112 maybe.

**The Chair:** Further debate? Seeing none, I'll put the question on the government motion.

All those in favour? It is carried.

**Mr Kells:** I move that the table to section 11 of the bill be amended by:

“(a) striking out ‘All upper-tier municipalities’ in column 3 of item 7”—

*Interjection.*

**Mr Kells:** Are we reading the right one? I'm doing the best I can.

**The Chair:** I beg your pardon.

**Mr Kells:** —“(Structures, including fences and signs) and substituting ‘Oxford’;

“(b) striking out ‘Oxford’ in column 3 of item 8 (Parking, except on highways) and substituting ‘All upper-tier municipalities’; and

“(c) inserting ‘collection and’ before ‘dissemination’ in column 2 of item 10 (Economic Development Services).”

This is, as far as we’re concerned, a housekeeping amendment.

**The Chair:** Further debate? Seeing none, I’ll put the question.

All those in favour of the amendment? It’s carried.

Mr McMeekin?

**Mr McMeekin:** I think this speaks to the issue I was raising with Burlington, so again it’s a housekeeping matter.

**Mr Kells:** This one’s going to be swept out.

**Mr McMeekin:** That’s fine. I apologize for not being as up to speed on the act as those who have actually written it, although I’m rapidly closing the intelligence gap here, the information gap. With that explanation it’s sufficient. I think it’s been covered off.

**The Chair:** OK. So you’re withdrawing the amendment?

**Mr McMeekin:** Yes, I’ll withdraw it. Amendment 10 is withdrawn. Number 11, Mr Prue.

**Mr Prue:** I believe that since my motion did not carry, I don’t know what sense this would have. I can introduce it but—

**Interjection:** For the record.

**Mr Prue:** Well, for the record then I’ll introduce it, the motion that section 11 be—but I don’t know the purpose. What purpose would it serve? If you could address that, Mr Chair.

**Mr Kells:** Proceed with the honourable thing and withdraw it.

**Mr Prue:** I don’t know that I want to withdraw it, because I still think my idea is right. But I know—

**Mr Kells:** Well, do the honourable thing and leave it and we’ll vote it down.

**Mr Prue:** The table would be then without substance. Do I need to read the whole thing into the record? I know what’s going to happen to it.

**The Chair:** Yes, you would have to normally. Your other option is to withdraw it.

**Mr Prue:** I’ll save some time; I’ll withdraw it.

**The Chair:** Amendment number 11 is withdrawn.

Shall section 11, as amended, carry? Section 11, as amended, is carried.

Any amendments or debate to sections 12 or 13? Seeing none, I’ll put the question. Shall sections 12 and 13 carry? Sections 12 and 13 are carried.

Section 14, Mr Prue.

**Mr Prue:** I move that section 14 of the bill be amended by adding the following subsection:

“Affordable rental housing

“(2) Despite any other act, a municipality may, by bylaw, prohibit the demolition of affordable rental housing or the conversion of affordable rental housing to condominium or other uses.”

**The Chair:** Do you wish to speak to your amendment?

**Mr Prue:** Quite frankly, the city of Toronto had that under former legislation and then it was taken away, and we have seen what has happened in the city as a result of that. There are three or four condominium conversions where the people are being removed from their apartments and luxury condominiums are being put in. With the dearth of affordable housing in the city of Toronto and, I would suggest, in other places around the province, municipalities should be given the option, if they wish, of protecting affordable rental housing, and that’s what this motion is about.

**Mr Colle:** I support this wholeheartedly. In my own part of Toronto, there are a number of older buildings that are providing excellent affordable housing, for a lot of seniors especially, that are now facing the demolition derby because of the fact that the municipality no longer has the power to stop these demolitions and conversions. The city did intervene in many cases, but it sort of acted as a preventive measure that stopped people from even considering doing this. We’re losing literally hundreds of affordable rental housing stock and we’re going to lose hundreds more, if not thousands, if this isn’t halted.

What’s very frustrating is that I know in my own riding there was Rosewell Court which was providing nice, affordable housing. There was high intensification. They were stacked townhouses basically right near Lawrence and Avenue Road. The developer has come in and is going to put condominiums up there and basically everybody’s going to be gone. Not only are the residents who live in Rosewell Court very upset—and most of them have been there 20, 30 years—because they have no place to go, but also the adjoining neighbourhood. This borders—I’m sure Mr Kells would know about it; Lawrence Park Collegiate is right around the corner there—Lytton Park, which is a very established neighbourhood in Toronto. It’s a great success story in terms of how the city of Toronto has worked very well with affordable housing, you might say, rental housing plus established neighbourhoods.

But the Lytton Park neighbourhood association and the Rosewell Court tenants’ association got together to try and stop the demolition. The city of Toronto supported their attempts, but the city of Toronto could not stop the demolition. It ended up going to the Ontario Municipal Board. I think Lytton Park and the tenants’ association spent about 150,000 bucks. They must have signed a petition with over 10,000 names. There wasn’t anybody in the community in favour of the demolition of Rosewell Court except the proponent, who was the landlord, the developer. Despite the city of Toronto being opposed, despite the tenants, the ratepayers, despite spending all this money, they had to go to the Ontario Municipal Board which, as usual, ruled in favour of the developer and allowed for the demolition to proceed.

You can see that not only do you lose affordable housing, but you essentially take away this basic power from local municipalities or local residents in terms of determining the shape of their neighbourhoods and what they feel their neighbourhood should look like. This is

compounded by the fact the same thing is happening on the other side of Lytton Park near Yonge Street, where I think the same developer is going to be bulldozing another set of apartment buildings on Cheritan.

This is an attempt to essentially give that power back to the municipalities, especially a municipality like Toronto where the vacancy rate is 0.6 or 0.9, or whatever it is; it's incredibly difficult finding a place to live. There are 60,000 people on the waiting list for some kind of affordable housing, and they're not building any rental housing. So in cases like this, the city should be given some kind of autonomy to say no to this kind of demolition, especially in light of the fact that in some municipalities such as Sarnia, for instance, this wouldn't be an issue, because in Sarnia the vacancy rate is about 7.5% and there isn't the same pressure there is in Toronto. That's why this amendment is very good, in that it gives the option to the local municipality in some cases to use their powers to support ratepayers or people who are trying to find affordable housing of passing such bylaws and enforcing them.

1120

I think what existed before was quite an effective piece of legislation and effective powers that local municipalities had, and if you take that away it's another example of not giving local ratepayers and people who are scrambling for affordable housing any kind of say over their ability to be housed and ability to live in a neighbourhood that is safe and very workable.

This amendment in particular really speaks volumes in terms of giving the municipality the ability to control a local planning issue which affects a lot of people, residents, ratepayers and tenants alike. This hits the nail right on the head. I know it goes against the government's rental housing policy, which promotes demolition and conversion, but I think overriding that should be the ability of the municipality to decide what they feel is best for their municipality, their taxpayers and the needs of municipality. It doesn't have to be implied and it doesn't have to be prescribed in every municipality. Let them pass bylaws that vary. You're not going to get this bylaw adhered to in municipalities where housing isn't a problem like it is in Toronto and Ottawa and other parts of this province. I certainly hope the members will support this amendment to section 14.

**Mr Norm Miller (Parry Sound-Muskoka):** I would just like to point out for the record, to do with the Toronto situation and the low vacancy rate for affordable housing and rental accommodation, that certainly a big part of the problem is that the property tax is four times what it is for condominiums or single residences. That's probably the biggest impediment to making affordable housing viable in the city of Toronto. I'd just like that to be pointed out. I think it's something like \$250 a month of anyone's rent that's property tax. The city of Toronto has a four times higher rate for apartments and rental housing than for condos or single houses, so obviously they're encouraging condos and single houses with their tax policy.

**Mr McMeekin:** I'm just wondering. I appreciate the point that my good friend Mr Miller is making about the disparity and look forward to the government taking some action with respect to this historic and unjust anomaly—

**Ms Mushinski:** It's not historic; it's within the powers of the municipalities.

**Mr McMeekin:** We've had 11 different bills. Again, it's ancient history, but reminiscing about my days as mayor, I can recall advising the government on assessment issues and seeing a bill and some 10 different amendments trying to get it right. Maybe this is one area where we need amendment number 12. If Mr Miller wants to sponsor a private member's bill with respect to that, I would be inclined to be pretty excited about looking at that, Norm, and perhaps even supporting you on it, because I think it is a historic anomaly and an unfairness that needs to be corrected. Governments of all three stripes have lacked the courage to go there, but if Mr Miller wants to go there, I'd certainly stand with him.

**Mr Prue:** The whole issue of whether tenants are paying abnormally high taxation through their rent is a separate issue. The motion here is not dealing with how much they pay in tax. The motion here is protecting the affordable accommodation, it's keeping people in their homes, and it's allowing the municipality the option, should they choose to take it, of protecting rental units in the face of redevelopment. What it does is simply stop the developer from buying an apartment building, kicking out all the tenants and redeveloping it into a condo, and these people have nowhere to go. As was said, in the city of Toronto there's a waiting list of 60,000 people. It's seven years for a one-bedroom apartment, nine years for a two-bedroom apartment, and three-plus is 14 years. If you have nowhere to go and you're poor and you have a family and need an apartment and you're on the waiting list, that's how long you have to wait. As these other apartments are taken down, these affordable units, it compounds and exacerbates the problem that the cities have.

The word "may" was specifically put in here. Mr Colle was right. Not every municipality is going to need to do this. Surely the only ones I can think of off the top of my head are likely to be Ottawa, Toronto and maybe Kitchener. I don't have the whole list, but there were a number of them that were around the 1% vacancy rate. Sudbury was at 7% and Sarnia was at 6%. I don't think they would need this kind of authority. All this motion does is give that authority to the municipality to do it in times when the vacancy rate is such that the loss of the rental accommodation will cause other huge problems. Some 26% of the people in homeless shelters in Toronto today are people who had an apartment last month. Let's not forget that. That costs the government money too. When you kick people out of their place, whether they can't pay their rent or whether their apartment is shut down, you cause enormous social upheaval. This is to make sure that that is a factor in the planning process.

If the government in its wisdom—and I know I can't move an amendment here because of the motion—

wanted to say that a municipality can only exercise that when the vacancy rate was under 2%, I would think that was a perfectly reasonable thing for a future amendment. But when a municipality is faced with this kind of situation, they need this kind of authority. It was exercised very well in Toronto before the City of Toronto Act took that authority away, and we are starting to see condominium conversion pick up very quickly and we're starting to see people in our homeless shelters as a result.

**Mr Colle:** Just to respond to Mr Miller, I guess what Mr Miller is advocating and saying is that single-family homeowners in Toronto should have their property tax increased by \$500 million and that a 30% tax increase would be OK with him. The people in Toronto are the same people who sat in this room, I remember, when the Minister of Municipal Affairs—I think it was Mr Al Leach—said, “If you weaken the rent controls of this province and bring in vacancy decontrol, developers will be building rental housing all over the place.” He said, sitting right here, “Let me pass decontrol and the builders will build.” Mr Leach was wrong. They haven't built any affordable housing and in fact we've lost more units than we've gained because of demolition and conversions. You had an opportunity maybe to increase housing stock with what people in Toronto call the landlord protection act your government passed, but you basically forced people out on to the street. With vacancy decontrol, you've got rents that used to be \$700 or \$800 and are now \$1,200, \$1,300 or \$1,400. That's what your government has done.

To come and offer some simplistic solution to providing rental housing by increasing the property tax by \$500 million on people in Toronto who already pay \$5,000, \$6,000, \$10,000, \$12,000 or \$15,000 a year on a home, I think isn't going to wash, because the people in Toronto know that unless the provincial government stops its downloading and gives the municipalities the power to provide services without the downloading, you can't make up that \$500 million overnight.

1130

Your government had the opportunity to do something with property tax assessment on multi-residential as opposed to single residential. You didn't do it. You might ask your minister why he didn't do it. Do you know why he didn't do it? Because he knew the downloading was going to come and he wanted to shift the blame to local property taxpayers in Toronto and their councillors when he could have done something. He refused to rectify the property tax inequities because they were more interested in downloading all these services and costs on to the backs of property taxpayers, who've had enough.

When you talk about doing something about rental housing and making the supply better and lowering the prices, here's an amendment that would do it. If you want to do something concrete, here's the amendment that would at least move in that direction.

I challenge your government to get rid of the downloading so perhaps there can be some equity in the way we tax people in res or single res or multi-res or commer-

cial, but your government is the same government that straitjackets municipalities all across this province in terms of what they can tax on commercial, on res, on multi-res. Your government has imposed on municipalities the most complicated property tax system in the world, with about 10 pieces of legislation that nobody can understand.

So if you want to talk about rectifying the tax policies, let's open up your 10 pieces of legislation that created this mess and maybe we can get back to some simple, basic powers to municipalities where they can at least, in some cases, stand up for people who can't find affordable housing.

Support this resolution if you want to do something about the lack of affordable housing and don't increase my property taxes in Toronto by \$500 million with the stroke of a pen without stopping the downloading.

**Ms Mushinski:** Diatribe.

**Mr Colle:** Diatribe? Some \$500 million to support that.

**Mr Kells:** I don't particularly want to get into the argument the honourable member just put forth, although I do think it's far-reaching in consideration of this amendment. But I would like to point out that under the Tenant Protection Act, we know it removes legislative impediments to condominium conversions and to demolition or renovation of rental buildings, but municipalities may still adopt or continue to have policies in their official plans to address these issues. In addition, municipalities in Ontario are permitted to use their existing powers under the Planning Act to protect the supply of rental housing.

Now, if we may get to some more facts, there is a court case pending about the scope of municipal powers under the Planning Act to control and regulate demolitions and conversions. This revolves around the city of Toronto's official plan, amendment 2, which is awaiting a divisional court decision. Finally, in view of the fact that these matters are before the court, it would be inappropriate to proceed with this proposed amendment. It should be noted that this amendment is identical to the provisions of a private bill that the city of Toronto has submitted to the Legislature and is currently before our regulations and private bills committee.

That's a roundabout way of saying we're not supporting your amendment at the present time.

**Mr Prue:** And not the private bill either.

**Mr Kells:** Well, I haven't gone that far.

**The Chair:** Further debate?

**Mr McMeekin:** Briefly, while I think there are some concerns, I think Mr Miller was raising a point that needs some attention. It is an area that governments of all three stripes have in the past hesitated to venture into, Mr Chairman, as you probably know.

I can remember some advice from one of my parents about never letting excellence become the enemy of the good. By and large, I'm not big on government intervening in the economic affairs of a situation, but that having been said, I think there's sometimes a greater

good that needs to be identified. In those rare instances—and I think Mr Prue to his credit identified that this would be very selective, and went out of his way. In fairness, recognizing the very difficult situations that are present in certain municipalities and not wanting excellence to become the enemy of the good, this is something I would urge members of the committee, who normally wouldn't want to intrude in the economic system for a whole slew of good, sound reasons, but understanding that while we should only have the government we need, we must insist on all the government we require—in this case there are a lot of people who are really down and out who are having difficulties, who are in a system where there isn't a fair fight. So municipalities selectively should be given that power. I would urge members of the committee to support this amendment.

**Mr Garfield Dunlop (Simcoe North):** May I make a quick comment? Mr McMeekin mentioned earlier an example in Hamilton-Aldershot-Flamborough, where he used to cut grass for \$900 a year and now it's \$2,800. Why is it \$2,800?

**Mr McMeekin:** I'll tell you why.

**Mr Dunlop:** Is it the inefficiencies in the Hamilton system?

**Mr McMeekin:** Let me tell you why, because—

**Mr Dunlop:** Well, there are inefficiencies.

**Mr McMeekin:** Can I answer the question?

**Mr Dunlop:** Yes, you can, but it better be good.

**Mr McMeekin:** Because there was an essential trampling on what the former town of Flamborough did well. We used to have volunteers cut the grass for the price of the gas. That doesn't happen any more, Mr Dunlop. What happens now—I don't want to sound anti-union—is you've got a union culture in the city of Hamilton—

**Mr Dunlop:** You don't need to say any more.

**Mr McMeekin:** You understand the frustration from the former mayor who used to count on that—from a government that talks about accountability and efficiency—and why we'd want to see that system maintained, why we don't want to lose volunteer professional firefighters when we can fight fires in the former municipality for 34% of the cost. Now the local union—the Minister of Labour's aware of this—is saying, "No, we don't want to see that happen any more." The total cost of fighting fires in the previous town of Flamborough right now is \$1.5 million. If we eradicate all the part-time professionals there, it would be \$1.4 million for each of the five stations. How is that efficient, effective, accountable local government, Mr Chairman? You and I both know it isn't.

**Mr Dunlop:** But all you've pointed out to me is that you had one municipality that was running very efficiently and one that was running absolutely—

**Mr McMeekin:** And what was our reward for that? To be amalgamated without our consent and against the wishes of 96% of our people. Thank you very much.

**Mr Dunlop:** And the choice that municipality has today is to make the whole operation efficient, as though Flamborough wasn't one—

**Mr Prue:** No, you can't because you said—

**The Chair:** Order.

**Mr McMeekin:** You're burning your store windows for heat, that's what you're doing.

**The Chair:** Order.

**Mr Dunlop:** I'm sorry I touched that spot.

**The Chair:** Mr Dunlop, order. One at a time.

**Mr McMeekin:** Well, when you mess up, fess up, that's all I'm asking. You just admitted it.

**The Chair:** Mr McMeekin, one at a time and through the chair.

**Mr McMeekin:** Through the chair, when you mess up, fess up. That's all I'm asking. We all make mistakes.

**Mr Dunlop:** All I'm saying is that you just pointed out the inefficiencies in it.

**Mr Colle:** That's right.

**Mr McMeekin:** In your amalgamated new city of Hamilton, absolutely.

**Mr Dunlop:** It's been pointed out for a number of years and that's what's wrong with the city of Toronto right now.

*Interjections.*

**The Chair:** Order. Thank you. Now, back to the matter at hand. Seeing no further debate, I'll put the question on Mr Prue's amendment. All those in favour? Opposed? The amendment is lost.

Shall section 14 carry? Section 14 is carried.

Any amendments or debate on section 15? Seeing none, shall section 15 carry? It is carried.

Section 16: the first amendment is a Liberal one? No? Number 13?

**Mr Kells:** We're not singing from the same—

**Mr McMeekin:** Same song sheet? We're not even in the same hymnbook.

1140

*Interjections.*

**The Chair:** You should have something for subsection 16(1).

**Mr Kells:** That's what I'm trying to say.

**The Chair:** No, there's a Liberal amendment that comes first.

**Mr Kells:** OK. I guess we had one. I haven't seen the Liberal one. OK, Liberal first.

**Mr McMeekin:** That's been clarified, Mr Chairman.

**The Chair:** That one is withdrawn. Mr Kells, it would be your turn.

**Mr Kells:** I can't withdraw mine. I move that the English version of subsection 16(1) of the bill be amended by striking out "systems of the type authorized by that sphere of its upper-tier or lower-tier municipality, as the case may be" at the end and substituting "systems of its upper-tier or lower-tier municipality, as the case may be, of the type authorized by that sphere."

This is a technical clarification. We're doing it because the city of Brampton expressed concern about the wording.

**The Chair:** Any debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? It is carried.

**Mr Kells:** I move that the English version of subsection 16(2) of the bill be amended by striking out "systems of the type authorized by that sphere of a person other than the municipality" and substituting "systems of a person other than the municipality of the type authorized by that sphere."

This is a clarification of the language and the modification has just been made for clarification purposes. No change in intent or whatever.

**The Chair:** Any debate? Seeing none, all those in favour of the amendment? Opposed? It is carried.

**Mr Prue:** I move that section 16 of the bill be amended by adding the following subsection:

"Heritage properties

"(5) Despite subsection (2), a municipality may pass bylaws to prevent the demolition of properties designated under the Ontario Heritage Act or located in a heritage conservation district under that act and may regulate the alteration of such properties."

In a nutshell, what we're saying is that there are many properties in this province which are under threat of demolition. A new owner comes along, buys the property; the municipality under the current legislation can only designate it. If it is designated, the municipality has the authority to forestall the demolition for six months, after which the property is lost forever. What is being suggested here is that municipalities have the authority within the act to prevent the demolition of those properties and save them for future generations.

**Mr Colle:** I would like to support this because it is another way of safeguarding heritage properties. As Mr Prue said, essentially when that six months is up, they can probably demolish it. This makes it a bit more secure in terms of keeping these heritage properties. I guess all of us are shocked about what happened in Markham last week when the developer said it was an accident that his crew went out there and bulldozed a beautiful heritage home and said it was just a goof-up by his contractor. That threat is always there and anything we can do to enhance that protection—and this motion does—should be supported, and I hope the government supports this. It just makes it a bit more waterproof in terms of protecting its heritage properties, so I certainly hope you support this.

**Mr Kells:** Actually the proposed amendment would override the provisions of the Ontario Heritage Act in this regard and our government can't support it because of that. Finally, permitting municipalities to prohibit the demolition of such properties would have a significant impact on the rights of their owners and it would be entirely inappropriate to proceed with such an amendment without providing these owners with an opportunity to provide comments. So we can't support the amendment.

**Mr Prue:** Again, it says "may" pass bylaws. This is not saying they "shall" or that they shall prohibit in every

case an owner from taking down a designated property. There are designated properties, and I guess the advent of time may—they may be designated, but there may be other properties of similar structure or nature or proximity that to save one and not all of them—but the reality is that there are many structures in this province which are under threat, and the municipality can only delay the destruction. To many people in the heritage community and to people at all levels of government, some of these are invaluable. Some of them are absolutely invaluable to future generations. Does history begin in 1950? Does history begin in 1970? If someone were to one day buy this building and tear it down, would the people of the province—maybe they might be overjoyed, I don't know.

It would seem to me to be a huge shame to let an opportunity go by, with the passage of this act, to reinforce the commitment of the people of this province to protect the heritage that goes back hundreds of years, through many cultures and many peoples; and what has been built here and put in built form, to simply allow someone, because they have sufficient money, to come and remove it for all time from the public. This is asking only that the municipality may pass bylaws to prevent the demolition of properties, which have to be designated or located in the conservation district, and may regulate the alteration of said properties. It's something that I think any Ontarian would want to do, notwithstanding that we recognize that private people may start to own many of these properties, because they are being put up for sale as municipalities across this province can no longer afford to maintain them.

I speak specifically about 205 Yonge Street in Toronto. It is the former home of Heritage Toronto, which has now been removed. It is going up for private sale. When it is sold, there is nothing to stop whoever buys that magnificent building, which people come from all over the world to see, from simply tearing it down six months later. That would be a shame, and it would be a blight. Whatever they built there would not be the same as what is there now. Cities need to be able to do that and need to be able to protect it.

Go to a city like Kingston, which has protected its heritage. My hat is off to the people of Kingston. You see all those old buildings. But what if one day that becomes the hot spot and somebody comes in and starts buying up those buildings and tearing them down? What have we lost as a culture? I think cities need to be able to protect that.

**Ms Mushinski:** I have a question of Mr Kells regarding the Ontario Heritage Act. Does the Ontario Heritage Act, per se, protect historically designated buildings?

**Mr Kells:** I'm not an expert on the Ontario Heritage Act, but I assume that's why it's there. The only thing I can point out is that in the last 15 years there have been three governments in this province and I don't think the heritage act has been changed dramatically. So I assume there's approval and support, and has been, from all three parties in relation to the intent and the terms of the Ontario Heritage Act. Whether it's "may" or whatever, if

you do it, it's not "may" any more, and that's why we can't let this amendment override the act.

**Ms Mushinski:** I take it that under the old Municipal Act, where municipalities have passed bylaws to prevent demolition of properties, it's really only for a period of time.

**Mr Kells:** I'll take your word on it.

**Mr Prue:** Quite definitely six months.

**Mr McMeekin:** I can add something to this, as one who, like so many others in this room, values history and heritage and wants to see the best of what we have preserved. Picking up on the comments of my colleague opposite, I don't think there is ever a wrong time to do the right thing.

One of the frustrations of those who dabble in the heritage act and of local groups is that, notwithstanding their best efforts to designate and affirm, sometimes there are situations—and Mr Prue has alluded to some of those—where a proposal comes along to do something different, and both the heritage fellows—sorry; the people who are engaged in that concern—and the municipality feel frustrated.

To the extent that the heritage acts provide some protection, this would simply be something, I would argue, that would be profoundly in sync with that. I think we should think in sync when we can. To the extent that it doesn't deal with that, I would say respectfully that this would be a way of providing some protection to communities and those who have the foresight to want to preserve what's good.

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I know in my own community, often what happens is that we get a request for a demolition permit, which has to be dealt with under the red tape provisions within a certain amount of time or else it simply kicks in automatically—no right of appeal. The municipality will frustrate the efforts to demolish for a certain period of time, but that runs out unless they can find an alternate way of providing and maintaining that particular property; often they can, but so often what's profoundly missing is the timeline to make those alternate arrangements. If we were to put this bylaw in place, it would then be incumbent on the municipality, if it were to exercise that bylaw, in the spirit of being accountable to their ratepayers, to ensure that that alternate solution was found and acted upon.

I think this is an important and perhaps even a profound amendment to the act. I frankly missed it, being so hung up on amalgamation and downloading and some of those other macro issues, but I really applaud Mr Prue for bringing this forward. I hope this will be one of those areas where we can rise above whatever partisan perspective we have and embrace this together for the sake of our heritage in and throughout Ontario.

**Ms Mushinski:** I just have a very quick question of Mr Donaldson, who is an expert in the Ontario Heritage Act and what the foundation does. I wonder if we could just bring him forward for a quick question.

**The Chair:** Certainly. Come forward, please.

**Ms Mushinski:** Mr Donaldson, the Ontario Heritage Act, as has been articulated by Mr McMeekin—can you hear me? Perhaps, for the sake of the members of the committee, you can tell us who you are.

**Mr Brian Donaldson:** My name is Brian Donaldson. I'm with the Ministry of Municipal Affairs and Housing.

**Ms Mushinski:** Can you tell me what the Ontario Heritage Act does in terms of protecting historically significant properties and buildings.

**Mr Donaldson:** I just wanted to mention that it is administered by another ministry—it's not ours—but in answer to your question, as the member said, if a property is designated, either as an individual property or located in a historic area, there is only a period of 180 days. After that, the property can be dealt with.

The example of Kingston was mentioned. The Ontario Heritage Foundation, when it gives significant funds, as it did in the case of St George's Anglican Cathedral, enters into an agreement with the owners and takes an easement. So in the case of that building and a number of other buildings, nothing can be changed without approval. There are different levels of designation, and the Ontario Heritage Foundation does have significant control over a number of these buildings. That was the only point I was mentioning.

**Ms Mushinski:** Where perhaps a municipality considers a designated property to be of significant historical value, do they have the opportunity to collaborate with the Ontario Heritage Foundation to see if they can do something to assist them with preserving such a significant property?

**Mr Donaldson:** Yes, there have historically been local grants from the LACACs, but the major funding tends to come from the province.

**Ms Mushinski:** So LACAC itself can also assist in protecting designated properties.

**Mr Donaldson:** They do the local designations. There's a process under the Ontario Heritage Act that provides for that.

**Mr Prue:** I also have a question for Mr Donaldson. The municipalities cannot stop demolitions after 180 days, and the only time they can get an easement is when they already own a portion of the property. If it's their property and they're selling it, of course they could retain a portion. But how would they get an easement on a private building? I'm thinking about the Concourse building in Toronto, which is going to be largely demolished, with Group of Seven murals inside and probably the best example of art deco in the whole city other than maybe the Harris filtration plant. It's going to be demolished, and many people are very angry about that.

**Mr Donaldson:** I'm not a lawyer, but I'm a member of St George's Anglican Cathedral and I know in that case the Ontario Heritage Foundation owns an easement against the building, which precludes any change without their approval.

**Mr Prue:** But how does a municipality get an easement on a private building?

**Mr Donaldson:** Basically by providing funding.

**Mr Prue:** So they have to go to the developer and say, "We're going to give you X million dollars so we can have an easement so you can't do what you want."

**Ms Mushinski:** That's not what he said.

**Mr Prue:** Well, that's what I'm trying to understand.

**Mr Donaldson:** It's a matter of agreement between either the municipality or the Ontario Heritage Foundation and the individual owner of the property.

**Mr Prue:** If the owner says, "No, I'm not going to give you an easement," what then?

**Mr Donaldson:** Then you don't get an easement.

**Mr Prue:** Then there's no protection.

**Mr Donaldson:** Then the normal procedures of the Ontario Heritage Act apply.

**Mr Prue:** So there's no protection of the building, then, if there's no easement.

**Ms Mushinski:** You want to take away the rights of the individual owner.

**Mr Prue:** No, I never said that. I'm just trying to ask a question, with all respect.

**Mr Colle:** He has the floor.

**Ms Mushinski:** You interrupted.

**Mr Prue:** I never interrupted anybody in this room once.

**Mr Donaldson:** To answer your question, unless the municipality either purchases the property or enters into an agreement in some way that would restrict the property owner's ability to make changes, the normal procedure is that the Ontario Heritage Act or the Planning Act would apply in that case.

**Mr Prue:** Which is to allow the demolition after 180 days. Thank you. That's what I thought.

**Mr Colle:** I guess the question is, therefore, would this amendment in essence give added protection by giving municipalities the power to designate and prevent demolition? Would it not enhance the protective power?

**Mr Donaldson:** I wouldn't begin to speak to that question.

**Interjection:** How come?

**Mr Donaldson:** That's a parliamentary assistant question.

**Mr Colle:** He's a wise bureaucrat.

**Mr Kells:** If I may, we would like to point out that the concerns that have been enunciated might be better handled under amendments or some kind of changes to the Ontario Heritage Act. We feel that's the place. I don't know if we're talking about a private member's bill for somebody, someday, or—

**Mr McMeekin:** Would you not be able to do that?

**Mr Kells:** Well, you people are always moving new bills. I'm just telling you where it would best be handled.

I would like to point out, just before we hit 12 o'clock, the honourable member to my left mentioned Harry Kitchen in somewhat derogatory terms. It's not necessary for me to come to the defence of Mr Kitchen. I think his background and record speak for themselves. I would like to point out, though, that in the 1980s Mr Kitchen was hired by the Liberal government to look into the amalgamation of the Niagara area.

**Mr McMeekin:** Just watch out for him in Muskoka.

**The Chair:** Any further debate on Mr Prue's amendment?

**Mr McMeekin:** Just on Dr Kitchen, who is a fine fellow, by the way, his father, Amos, was the last reeve of the historic town of Beverly. I can tell you, there were some wonderful conversations between Dr Kitchen and his dad about issues.

**Mr Kells:** You didn't come to his defence, then.

**Mr Colle:** Well, the people in Victoria county don't like him too much.

**The Chair:** Is there any further debate on the amendment? Seeing none, I'll put the question.

All those in favour of Mr Prue's amendment? Opposed? The amendment is lost.

Shall section 16, as amended, carry? It is carried.

Recognizing that it is now noon, this committee will stand recessed until 3:30.

*The committee recessed from 1159 to 1544.*

**The Chair:** I call the committee back to order, as we continue our clause-by-clause consideration of Bill 111.

**Mr Colle:** On a point of order, Mr Chair: I just want to move that I'm withdrawing the Liberal motion with regard to section 239. I'd like to move that it be struck. We're not going to proceed with that. I don't know what the number of it is. It deals with section 239.

**The Chair:** Strictly speaking, it's not a motion. It's advice to the committee you're providing, but we certainly will note that amendment number 58 will be considered withdrawn at such point as we—

**Ms Mushinski:** What section?

**The Chair:** It affects subsection 239(1).

**The Chair:** We left off at section 17 of the bill. Mr Prue?

**Mr Prue:** Did we not finish that?

**The Chair:** No. We had finished section 16.

**Mr Prue:** I don't seem to see it here. I don't want to impede—that was section 17?

**The Chair:** You have an amendment to section 17 and it happens to be amendment number 17 as well.

**Mr Prue:** Oh, yes. Maybe this is it here underneath. There it is, hidden from me.

I move that section 17 of the bill be amended by adding the following subsection:

"Exception

"(3) Subsection (1) does not prevent a municipality from holding shares in a public utility company or electrical utility company."

I think it speaks for itself. Many municipalities that are divesting themselves of their electric and power utilities would like to maintain at least some control over them. The way they would do that is by obtaining and holding shares. This says that a municipality can be a shareholder in such companies.

**Mr Kells:** The proposed section 17 does not prevent a municipality from exercising a corporation's powers obtained under other legislation. The proposed motion is redundant. Municipalities currently obtain this and other powers with respect to municipal electric utility com-

panies under the Electricity Act, and for public utilities under this bill, Bill 111, subsection 481(9), which would amend the public act if passed. I'm not sure what that means, but I read it. Furthermore, if the motion were to be adopted, the motion could be interpreted to permit or validate actions not authorized under existing legislation or under section 203 of the proposed act.

Having said all that, we can't support your amendment. You don't want me to read that again, do you?

**Mr Prue:** This one's not a big one. You've already destroyed me on all the good ones. Go ahead.

**The Chair:** Further debate? Seeing none, I'll put the question on Mr Prue's amendment. All those in favour? Opposed? That amendment is lost.

Shall section 17 carry? Section 17 is carried.

Sections 18 through 23: any amendments or debate? Seeing none, I'll put the question. Shall sections 18 through 23 carry? Sections 18 through 23 are carried.

Section 24?

**Mr Kells:** I move that section 24 of the bill be amended by striking out the definitions of "lower-tier highway" and "upper-tier highway."

**The Chair:** Any debate?

**Mr Kells:** It's a housekeeping amendment.

*Interjection.*

**Mr Kells:** OK. This change is proposed because the sections to which the definitions are to apply can be interpreted clearly without the need to define lower-tier and upper-tier highway. I think that's as close to housekeeping as I can get.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour of Mr Kells's amendment? Opposed? It's carried.

Shall section 24, as amended, carry? Section 24, as amended, is carried.

Sections 25 through 39: any amendments or debate? Seeing none, I'll put the question. Shall sections 25 through 39 carry? Sections 25 through 39 are carried.

Section 40?

**Mr Prue:** I'd like to move the following motion. I move that section 40 of the bill be amended by adding the following subsection:

"Restriction

"(1.2) A municipality only has the power to designate, operate and maintain a highway as a toll highway if,

"(a) the highway is a new highway;

"(b) the highway is a reconstructed highway; or

"(c) the highway has been transferred to the municipality by the province of Ontario."

My rationale for this is that the Canadian Automobile Association and some other automobile groups were very cautious, and I think rightly so, that municipalities will attempt to toll-up existing roads that have already been paid for. There needs to be some framework in which the municipalities could work. It seems to me that if a new highway is built, that speaks for itself. It can be done in any number of ways and it has to be paid for, either through public or private, and that it could be tolled. If a highway is reconstructed to the point that it's going to

cost millions or billions of dollars—and I point out the Gardiner as an example. If it is eventually torn down and buried, there may be some kind of rationale for that.

Last but not least is if a highway has been transferred to the municipality by the province of Ontario. That has happened several times over the last few years, with municipalities oftentimes not wishing to take the highway because of the huge costs involved in bringing it up to standard. That may help to sway the province from passing over highways to municipalities that don't want them. That would be the rationale, and I would ask for support.

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**Mr Kells:** The amendment as suggested would provide direction on the conditions and circumstances under which a toll highway would be permitted. We believe this is premature and unnecessary in the legislation, since this type of direction would be provided through the normal regulations as described in section 40(3). The government doesn't necessary disagree with your sentiment, but we prefer to deal with it in regulations, as MTO and SuperBuild are working on policies in this field. So we'll have to decline to support your amendment, although we understand where it came from, and the logic. We have our own agenda that we have to follow through on, involving SuperBuild and MTO.

**Mr Colle:** I just want to make a comment to highlight the need and maybe reinforce this up front, because there was a motion put forward and debated at the city of Toronto council. One of the councillors has been an exponent of tolling the Don Valley parking lot—Parkway. It's a real threat. I hope somehow at some point in time there is a policy set forward in terms of what you can and can't toll because, no doubt municipalities are going to be looking for revenue sources or whatever and we could see some existing roads tolled when they've already been paid for. That's why I would support the stricter definition of what's allowed and what isn't.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour of Mr Prue's amendment? Opposed? The amendment is lost.

Mr McMeekin?

**Mr McMeekin:** I'll just put the amendment. I move that subsection 40(3) of the bill be amended by striking out clause (g). I don't anticipate it'll pass because it's designed to limit the power of the minister, but I will put that as per the auto club request the other day.

**The Chair:** Any debate? Seeing none, I'll put the question. All those in favour of Mr McMeekin's amendment? Opposed? It is lost.

Shall section 40 carry? Section 40 is carried.

Sections 41 through 50: any amendment or debate? Seeing none, I'll put the question. Shall sections 41 through 50 carry? Sections 41 through 50 are carried.

Section 51?

**Mr Kells:** Section 51(1): I move that this subsection of the bill be amended by striking out "requiring a wheeled vehicle used for farming purposes to obtain a licence or permit before using it upon any highway of the

municipality" at the end and substituting "to require that a licence or permit be obtained in respect of a wheeled vehicle used for farming purposes before the vehicle may be used upon any highway of the municipality."

**Mr McMeekin:** What's the difference?

**Mr Kells:** It's a clarification of the language. I haven't got the old language in front of me, but it's a clarification. This modification clarifies the language of the section. The modification does not represent any change of policy. You could call it housekeeping or you can call it what you will.

**Mr McMeekin:** It's like you put the verb before the noun and the noun before the verb, but other than that—

**Mr Kells:** Yes. It's a tidying-up process.

**The Chair:** Seeing no further debate, I'll put the question on Mr Kells's amendment.

All those in favour? Opposed? It is carried.

Shall section 51, as amended, carry? Section 51, as amended, is carried.

Sections 52 through 67: any amendment or debate? Seeing none, I'll put the question. Shall sections 52 to 67 carry? They are carried.

Section 68.

**Mr Kells:** I move that subsection 68(1) of the bill be amended by striking out "on January 1, 2003" and substituting "on the day this act receives royal assent."

The reason for this is the change rectifies an inadvertent error. It was intended that this section would come into force on royal assent. During editing, this was mistakenly changed to January 1, 2003.

**The Chair:** Any debate? Seeing none, I'll put the question. All those in favour? Opposed? The amendment is carried.

Shall section 68, as amended, carry? Section 68, as amended, is carried.

Sections 69 through 76: any amendment or debate? Seeing none, shall sections 69 through 76 carry? Sections 69 through 76 are carried.

Section 77.

**Mr Kells:** I move that clause 77(1)(b) of the bill be amended by striking out "\$20,000" and substituting "\$25,000."

This is a housekeeping amendment to where we got the wrong amount. The penalty in the current act for the same offence is \$25,000 and we want to return to the original amount.

**The Chair:** Any debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? It's carried.

Shall section 77, as amended, carry? It is carried.

Sections 78 through 91: any amendments or debate? Seeing none, shall sections 78 through 91 carry? Sections 78 through 91 are carried.

Section 92.

**Mr Kells:** I move that clause 92(1)(b) of the bill be amended by striking out "\$20,000" and substituting "\$25,000," for the same reason as the previous amendment.

**The Chair:** Any debate? Seeing none, all those in favour of the amendment? Opposed? It is carried.

Shall section 92, as amended, carry? Section 92, as amended, is carried.

Sections 93 through 99: any amendment or debate? Seeing none, shall sections 93 through 99 carry? Sections 93 through 99 are carried.

Section 100.

**Mr Prue:** I move that section 100 of the bill be amended by adding the following section:

"Front yard parking

"(2) A local municipality may allow, regulate or prohibit front yard parking on land not owned or occupied by the municipality under such conditions as may be specified in the bylaw."

I'm not sure how widespread this is in all areas of Ontario, but in the city of Toronto alone, there are 40,000 front yard parking pads which are regulated by the city and which allow people to park on land which is privately owned and in part upon which the city has easements. The city of Toronto has requested this in order to make sure that it does not lose control over the regulation of front yard parking pads and perhaps their proliferation. There is a considerable debate going on within the city of Toronto at this point whether or not to grandfather out and cease and desist using front yard parking pads, but there is also a considerable body of support which wants to continue their use within the city of Toronto. This would allow and make it clear that front yard parking was possible and that the city and all cities would have the authority to allow, regulate or prohibit its use.

**Mr Kells:** If I may, if I recall, and I do, Mayor Hazel McCallion of Mississauga was here a little while ago and told us in no uncertain terms that municipalities have the ability to look after their own affairs. I think that same rationale applies to the city of Toronto. As you've mentioned, the former city of Toronto and, I guess, now the present city of Toronto had obtained special legislation some years ago to deal with this matter. So even though they might be debating it, it's in their backyard. They have that legislation and it's there's to deal with as they may.

So we can't support your amendment, particularly from the city of Toronto point of view. From the rest of Ontario, although the government does not support an amendment to Bill 111, it believes that this issue should be considered in greater detail in consultation with municipalities with a particular interest in this matter. So we will open down the line to a municipality that feels it has what was the Toronto problem and we'd be happy to discuss that. But to amend the bill when the city of Toronto already has the power, and they're the main user of this legislation, we're quite content to leave it the way it is.

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**The Chair:** Further debate? Seeing none, I'll put the question on Mr Prue's amendment. All those in favour? Opposed? It is lost.

Shall section 100 carry? Section 100 is carried.

Sections 101 through 109: any amendment or debate? Seeing none, shall sections 101 to 109 carry? They are carried.

Section 110.

**Mr Kells:** I move that section 110 of the bill be amended by (a) striking out clause (8)(c) and substituting the following:

“(c) the secretary of any school board if the area of jurisdiction of the board includes the land exempted by the bylaw”;

(b) striking out clause (13)(c) and substituting the following:

“(c) the secretary of any school board if the area of jurisdiction of the board includes the land exempted by the resolution”;

(c) adding the following subsection:

“(8.1) If a municipality designated as a service manager under the Social Housing Reform Act, 2000 has entered into an agreement under this section with respect to housing capital facilities, any other municipality that has not entered in an agreement under this section with respect to the capital facilities and that contains all or part of the land on which the capital facilities are or will be located may exercise the power under subsections (3), (6) and (7) with respect to land and the capital facilities but,

“(a) a tax exemption under subsection (6) applies to taxation for its own purposes; and

“(b) clauses (8)(b) and (c) do not apply.”

**The Chair:** Thank you, Mr Kells. Before you say anything more, it is now past 4 o'clock. You were in the middle of your motion, but pursuant to the order of the House, I must now interrupt all debate and put all further questions, without any subsequent debate. The amendment before us is the one marked number 26 to section 110. All those in favour? Opposed? That amendment is carried.

Shall section 110, as amended, carry? Section 110, as amended, is carried.

Section 111 has an amendment marked as number 27 in your packet. All those in favour of the amendment? Opposed? It is carried.

Shall section 111, as amended, carry? It is carried.

Sections 112 to 118.

**Mr McMeekin:** On a point of order or procedure, Mr Chairman: Can we have it recorded that on all motions herein that are not subject to debate, we will officially abstain, please?

**The Chair:** You say the words. They are recorded in Hansard forever, so duly noted.

Sections 112 through 118: shall they carry? Sections 112 through 118 are carried.

Section 119 has a government amendment marked as number 28. All those in favour? Opposed? It is carried.

Shall section 119, as amended, carry?

**Mr McMeekin:** Abstain.

**The Chair:** It is carried.

Having been on the record once, we don't record abstentions in committee.

**Mr McMeekin:** So I can take it for granted that other than the good Liberal amendments here, they'll be recorded as—

**The Chair:** I'm sorry, I can't countenance any debate.

Shall sections 120 and 121 carry? Sections 120 and 121 are carried.

Section 122 has an NDP amendment marked as number 29. All those in favour? Opposed? It is lost.

Shall section 122 carry? Section 122 is carried.

Shall sections 123 to 129 carry? Sections 123 to 129 are carried.

Section 130 has, first off, an amendment marked number 30 from the NDP. All those in favour? Opposed? That amendment is lost.

Number 31 is an amendment to the same section from the Liberals. All those in favour? Opposed? That is lost.

Shall section 130 carry? It is carried.

Shall sections 131 and 132 carry? They are carried.

Section 133 has an amendment marked number 32 from the government. All those in favour? Opposed? That amendment is carried.

Shall section 133, as amended, carry? It is carried.

Shall section 134 carry? It is carried.

Section 135 has an amendment marked number 33 from the NDP. All those in favour? Opposed? That is lost.

Shall section 135 carry? It is carried.

Shall sections 136 through 143 carry? Sections 136 to 143 are carried.

Section 144 has an amendment from the government marked number 34. All those in favour? Opposed? It is carried.

Shall section 144, as amended, carry? It is carried.

Shall sections 145 to 148 carry? Sections 145 to 148 are carried.

There is an amendment to section 149, marked in your packet as number 35, from the government. All those in favour? Opposed? It is carried.

Shall section 149, as amended, carry? It is carried.

There is a new section—

**Mr Colle:** Wasn't there a Liberal motion?

**The Chair:** No, that's a new section now, 149.1.

**Mr Colle:** Recorded vote on that.

**The Chair:** Mr Colle has requested a recorded vote on the amendment. There actually are a number of amendments to this new section. They are noted as 36 to 42, but I would draw your attention to the fact that there is no number 40.

First off will be the Liberal motion, number 36. All those in favour? Mr Colle has asked for a recorded vote.

*Interjection.*

**The Chair:** I beg your pardon; that's right. We defer recorded votes to the end of this proceeding.

*Interjection.*

**The Chair:** At the end of all the votes that we're taking this afternoon here. So you've asked for recorded votes on all five of these motions?

*Interjection.*

**The Chair:** All the motions affecting this section, though?

**Mr Colle:** Yes.

**The Chair:** So those would be amendments 36 through 42—I beg your pardon: pages 36 to 42. It's all one motion. That amendment will be stood down and we will return to that, which takes us to section 150. The next amendment is marked—

**Ms Mushinski:** I'm very confused right now.

**The Chair:** We will not vote on that until the end of all the voice votes.

**Ms Mushinski:** OK, so we're separating that out because he's asked for a recorded vote?

**The Chair:** Recorded votes are kept to the end, which means that next in our packet is section 150. You have an amendment marked page 43 from the NDP. All those in favour? Opposed? It is lost.

The next amendment is number 44 from the government. All those in favour? Opposed? It is carried.

The next amendment is number 45 from the NDP. All those in favour? Opposed? It is lost.

The next is from the government on page 46. All those in favour? Opposed? It is carried.

The next is from the NDP on page 47. All those in favour? Opposed? It is lost.

The next is from the Liberals on page 48. All those in favour? Opposed? It is lost.

The next is from the NDP on page 49. All those in favour? Opposed? It is lost.

Shall section 150, as amended, carry? Section 150, as amended, is carried.

Shall sections 151 to 156 carry? Sections 151 to 156 are carried.

Section 157 has an amendment from the government marked in your package as number 50. All those in favour? Opposed? It is carried.

Shall section 157, as amended, carry? It is carried.

Shall sections 158 to 166 carry? Sections 158 to 166 are carried.

Section 167 has an amendment from the NDP marked number 51. All those in favour? Opposed? It is lost.

Shall section 167 carry? It is carried.

Shall sections 168 to 173 carry? They are carried.

Section 174 has an amendment from the NDP marked number 52. All those in favour?

*Interjection.*

1610

**The Chair:** Indeed. We can ignore page 52. It's not a formal motion.

Shall section 174 carry? It is carried.

Shall sections 175 to 178 carry? They are carried.

Section 179 has an NDP amendment marked as number 53 in your packet. All those in favour? Opposed? It fails.

Shall section 179 carry? It is carried.

Shall sections 180 through 193 carry? They are carried.

Section 194 has an amendment from the government, page 54. All those in favour? Opposed? It is carried.

Shall section 194, as amended, carry? It is carried.

Section 195 has an amendment from the NDP marked page 55. All those in favour? Opposed? It is lost.

Shall section 195 carry? It is carried.

Shall sections 196 through 210 carry? They are carried.

Section 211 has an amendment from the government marked page 56. All those in favour? Opposed? It is carried.

Shall section 211, as amended, carry? It is carried.

Shall sections 212 through 222 carry? They are carried.

There is an amendment on section 223 from the Liberals. All those in favour?

**Mr McMeekin:** Can we pull that for a recorded vote as well?

**The Chair:** We'll defer the vote on page 57, the amendment to section 223.

Shall sections 224 through 238 carry? They are carried.

Section 239—

**Mr Colle:** There was a Liberal withdrawal on 239.

**The Chair:** That was the one that we withdrew, yes.

**Ms Mushinski:** Is that 58?

**The Chair:** Pages 58 through 67.

Shall sections 239 through 252 carry? They are carried.

Section 253 has an amendment from the government marked page 68. All those in favour? Opposed? It is carried.

Shall section 253, as amended, carry? It is carried.

Shall sections 254 to 262 carry? They are carried.

Section 263 has an NDP amendment. All those in favour? Opposed? It is lost.

Shall section 263 carry? It is carried.

Shall sections 264 to 267 carry? They are carried.

Section 268 has a Liberal amendment marked as number 70.

**Mr McMeekin:** Recorded vote on that as well.

**The Chair:** That will be deferred.

Shall sections 269 to 274 carry? They are carried.

We have a sequencing change. We will call first pages 73 and 74, a government amendment.

*Interjection.*

**The Chair:** I beg your pardon. I flipped one too many. Page 71, an NDP amendment to section 275: all those in favour? Opposed? It is lost.

Then we will call the government motion, which is marked as pages 73 and 74. All those in favour? Opposed? It is carried.

Then there is the Liberal motion, page 72. All those in favour? Opposed? It is lost.

Shall section 275, as amended, carry? It is carried.

Shall sections 276 to 281 carry? They are carried.

I beg your pardon; a failure to highlight. Section 276 has a government amendment marked page 75. All those in favour? Opposed? It is carried.

So I will now ask, shall section 276, as amended, carry? It is carried.

Shall sections 277 to 281 carry? They are carried.

Section 282 has a government amendment marked in your packet as number 76. All those in favour? Opposed? It is carried.

Shall section 282, as amended, carry? It is carried.

Section 283 has an NDP amendment marked as number 77.

**Mr Prue:** Recorded vote.

**The Chair:** It will be deferred.

Shall sections 284 to 288 carry? They are carried.

Section 289 has a government amendment marked number 78. All in favour? Opposed? It is carried.

Shall section 289, as amended, carry? It is carried.

Section 290 has a government amendment marked number 79. All those in favour? Opposed? It is carried.

Shall section 290, as amended, carry? It is carried.

Shall sections 291 to 302 carry? They are carried.

Section 303 is not a motion, so shall sections 303 to 309 carry? They are carried.

Section 310 has an amendment from the government marked page 81 in your packet. All those in favour? Opposed? It is carried.

Shall section 310 as amended carry? It is carried.

**Ms Mushinski:** What was that number?

**The Chair:** It was 81.

Section 311 has a government amendment marked number 82 in your packet. All those in favour? Opposed? It is carried.

Shall section 311 as amended carry? It is carried.

Section 312. There's a government amendment marked number 83 in your packet. All those in favour? Opposed? It is carried.

It also has a government amendment marked number 84 in your packet. All those in favour? Opposed? It is carried.

Shall section 312 as amended carry? It is carried.

Shall sections 313 and 314 carry? They are carried.

Section 315 has a government amendment marked page 85. All those in favour? Opposed? It is carried.

Shall section 315 as amended carry? It is carried.

Section 316. Shall it carry? It is carried.

Section 317 has a Liberal amendment marked as number 86 in your packet. All those in favour? Opposed? It is lost.

Shall section 317 carry? It is carried.

Shall sections 318 through 322 carry? They are carried.

Section 323 has a government amendment marked page 87 in your packet. All those in favour? Opposed? It is carried.

Shall section 323 as amended carry? It is carried.

Section 324 has a government amendment marked number 88 in your packet. All those in favour? Opposed? It is carried.

Shall section 324 as amended carry? It is carried.

Section 325 has a government amendment marked number 89 in your package. All those in favour? Opposed? It is carried.

Shall section 325 as amended carry? Carried.

Shall sections 326 and 327 carry? They are carried.

There is a new section 327.1 proposed on page 90 by the NDP. All those in favour? Opposed? It is lost.

Shall sections 328 through 342 carry? They are carried.

Section 343 has a government—

**Mr Colle:** It's a Liberal—

**The Chair:** It's not quite on the floor yet, Mr Colle, but I appreciate your enthusiasm.

Section 343 has a Liberal amendment marked number 91 in your packet.

**Mr Colle:** Defer.

**The Chair:** Mr Colle has requested a deferral.

**Ms Mushinski:** Was it deferred or—

**The Chair:** Deferral.

*Interjections.*

**The Chair:** You asked for a recorded vote, which has the effect of deferring.

Section 344 is not a motion. Shall section 344 carry? It is carried.

Section 345 has a government amendment marked number 93 in your packet. All those in favour? Opposed? It is carried.

Shall section 345 as amended carry? It is carried.

Shall section 346 carry? It is carried.

Section 347 has a government amendment marked number 94 in your packet. All those in favour? Opposed? It is carried.

Shall section 347 as amended carry? It's carried.

Shall sections 348 to 351 carry? They are carried.

Section 352 has a government amendment marked number 95 in your packet. All those in favour? Opposed? It is carried.

Shall section 352 as amended carry? It is carried.

Shall sections 353 to 355 carry? They are carried.

Section 356 has a government amendment, number 96 in your packet. All those in favour? Opposed? It's carried.

Shall section 356 as amended carry? It's carried.

Section 357 has a government amendment marked number 97. All those in favour? Opposed? It is carried.

Shall section 357 as amended carry? It is carried.

Section 358 has a government amendment marked number 98. All those in favour? Opposed? It is carried.

Shall section 358 as amended carry? It is carried.

Section 359 has a government amendment marked number 99. All those in favour? Opposed? It is carried.

Shall section 359 as amended carry? It is carried.

Shall sections 360 to 371 carry? They are carried.

Section 372 has a government amendment marked number 100 in your package. All those in favour? Opposed? It is carried.

Shall section 372 as amended carry? It is carried.

Shall sections 373 to 399 carry? They are carried.

Section 400 has a government amendment marked number 101 in your packet. All those in favour? Carried.

Shall section 400 as amended carry? It is carried.

1620

Shall sections 401 through 426 carry? Sections 401 through 426 are carried.

**Ms Mushinski:** You withdrew 102?

**The Chair:** No, it's not a motion.

Section 427 has an NDP amendment, marked in your packet as number 103. All those in favour? Opposed? It is lost.

Shall section 427 carry? Carried.

Shall sections 428 through 439 carry? Sections 428 through 439 are carried.

Section 440 has a government amendment marked number 104 in your package. All those in favour? Opposed? It is carried.

Shall section 440, as amended, carry? It is carried.

Shall sections 441 to 451 carry? They are carried.

There is a new section 451.1 proposed by the Liberals. Mr McMeekin has requested a recorded vote, so we will defer consideration of item number 105.

Shall sections 452 to 464 carry? Sections 452 to 464 are carried.

Section 465 has a government amendment marked number 106 in your package. All those in favour? Opposed? It is carried.

Shall section 465, as amended, carry? It is carried.

Shall sections 466 to 471 carry? They are carried.

There is a new section 471.1 proposed by the government, pages 107 and 108. All those in favour? Opposed? It is carried.

Shall sections 472 to 475 carry? They are carried.

Section 476 has a government amendment marked number 109 in your package. All those in favour? Opposed? It is carried.

There's a government amendment marked number 110 in your package. All those in favour? Opposed? It is carried.

There's another government amendment, marked number 111. All those in favour? Opposed? It is carried.

There's another government amendment, marked number 112. All those in favour? Opposed? It is carried.

There's another government amendment, marked number 113. All those in favour? Opposed? It is carried.

Shall section 476, as amended, carry? It is carried.

Section 477 has a government amendment marked number 114. All those in favour? Opposed? It is carried.

Section 477 has another amendment, on pages—

**Mr Kells:** Wait—477(1.1). That one?

**The Chair:** We did (1.1). We're now on 477(3.1) (3.2) and (3.3), found on pages 115 and 116. All those in favour?

**Mr Kells:** Hold it. May I go back? We just want to make sure that was in order. I have a warning note—

**The Chair:** The clerk has not advised me otherwise.

**Mr Kells:** The question is, I have a little note here that says "may require unanimous consent to be in order." I'm just bringing it up.

**The Chair:** It's a moot point, because we voted on it and we've moved on to page 115.

*Interjections.*

**The Chair:** Order. The clerk has the normal responsibility of advising if things do not meet the test, and there is no such indication from the clerk.

**Mr Kells:** I didn't mean to be difficult. OK. Roll away.

**The Chair:** We're now at the amendment on pages 115 and 116, a government amendment. All those in favour? Opposed? It is carried.

The government amendment marked on page 117: all those in favour? Opposed? It is carried.

Shall section 477, as amended, carry? It is carried.

Shall sections 478 to 481 carry? They are carried.

Section 482 has a government amendment marked number 118. All those in favour? Opposed? It is carried.

Shall section 482, as amended, carry? It is carried.

Shall sections 483 to 485 carry? They are carried.

Shall the title of the bill carry?

Shall Bill 111—well, we'll leave that one till we hold the final votes.

We now are back to the recorded votes, starting with page 36. It was a Liberal motion, an amendment to section 149.1. Mr Colle has asked for a recorded vote. All those in favour?

**Ayes**

Colle, McMeekin, Prue.

**Nays**

Dunlop, Kells, Miller, Mushinski.

**The Chair:** That amendment is lost.

The next recorded vote was to subsection 223(4), a Liberal motion. All those in favour?

**Ayes**

Colle, McMeekin, Prue.

**Nays**

Dunlop, Kells, Miller, Mushinski.

**The Chair:** That amendment is lost, which means we will now put the question. Shall section 223 carry? It is carried.

The next recorded vote was the amendment marked number 70, an amendment to subsection 268(6) from the Liberals. All those in favour?

**Ayes**

Colle, McMeekin, Prue.

**Nays**

Dunlop, Kells, Miller, Mushinski.

**The Chair:** That amendment is lost.

Shall section 268 carry? It is carried.

The next amendment is number 77, an amendment to section 283 from the NDP. All those in favour?

**Ayes**

Colle, McMeekin, Prue.

**Nays**

Dunlop, Kells, Miller, Mushinski.

**The Chair:** That amendment is lost.

Shall section 283 carry? It is carried.

The next amendment is number 91, an amendment to section 343 from the Liberals. All those in favour?

**Ayes**

Colle, McMeekin, Prue.

**Nays**

Dunlop, Kells, Miller, Mushinski.

**The Chair:** That amendment is lost.

Shall section 343 carry? It is carried.

The next amendment was the one marked 105, an amendment for a proposed new section 451.1 from the Liberals. All those in favour?

**Ayes**

Colle, McMeekin, Prue.

**Nays**

Dunlop, Kells, Miller, Mushinski.

**The Chair:** That is lost.

That now takes us back to the final two questions.

Shall Bill 111, as amended, carry? It is carried.

Shall I report the bill, as amended, to the House?

**Interjections:** Carried.

**Mr Colle:** Can we have a recorded vote? Is that possible?

**The Chair:** Well, you're a little slow, but—

**Interjection:** You're fast.

**The Chair:** If you want a recorded vote on reporting to the House, I'm happy to indulge. All those in favour?

**Ayes**

Dunlop, Kells, Miller, Mushinski.

**Nays**

Colle, McMeekin, Prue.

**The Chair:** I shall report the bill, as amended, to the House.

With that, we have satisfied the requirements of the order of the House. The committee now stands adjourned until 3:30 on December 3.

*The committee adjourned at 1628.*





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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 3 December 2001

# Journal des débats (Hansard)

Lundi 3 décembre 2001

**Standing committee on  
general government**

Quality in the Classroom  
Act, 2001

**Comité permanent des  
affaires gouvernementales**

Loi de 2001 sur la qualité  
dans les salles de classe

Chair: Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 3 December 2001

Lundi 3 décembre 2001

*The committee met at 1552 in room 151.*QUALITY IN THE CLASSROOM  
ACT, 2001LOI DE 2001 SUR LA QUALITÉ  
DANS LES SALLES DE CLASSE

Consideration of Bill 110, An Act to promote quality in the classroom / Projet de loi 110, Loi visant à promouvoir la qualité dans les salles de classe.

## ONTARIO PARENT COUNCIL

**The Chair (Mr Steve Gilchrist):** I'll call the committee to order as we hold clause-by-clause consideration of Bill 110, An Act to promote quality in the classroom. My apologies to the groups scheduled to start off. As you may be aware, under the rules of the Legislative Assembly we're not allowed to start until what are called routine proceedings have ended in the chamber.

That having just been completed, we'd be pleased to call forward as our first group the Ontario Parent Council. Good afternoon. Welcome to the committee. Just a reminder that we have 15 minutes for your presentation, for you to divide as you see fit between presentation and time for question and answer.

**Mr Greg Reid:** Thank you very much, Mr Chair and members of the committee. My name is Greg Reid. I'm the chair of the Ontario Parent Council. We are very pleased today to have the opportunity to speak to this committee regarding the Quality in the Classroom Act, 2001. We've provided the clerk with copies of our speaking notes for today.

In the time allotted to me today, I hope to provide some insight as to why parents are solidly behind the government in its efforts to ensure that both parents and our most precious resource, our children, benefit by the components of this proposed legislation.

Our understanding of the proposed bill is that it contains two key components: the qualifying test and the performance appraisal system. First, let me speak to the qualifying test.

Information we have received indicates that some 8,000 to 9,000 candidates, comprised of both new graduates of Ontario teaching colleges and teachers trained in other jurisdictions, will take the test each year. Given that there is a tremendous demand for teachers

throughout the publicly funded education system, it only makes sense that there be a common standard, the qualifying test, for teachers entering the system throughout the province. Parents would be reassured to know that no matter where their son's or daughter's teacher received their education, be it in Ontario or in another jurisdiction, there would be a consistent and meaningful evaluation of the teacher's education, which would reassure us that our children are receiving the best possible education. That's the one area where parents across the province can agree: they want the best for their children.

Parents want that assurance that when their son or daughter enters a classroom for the first day, the teacher they will rely so heavily on for guidance, leadership and to prepare them for the next step in their education is fully capable of providing all of the necessary knowledge and skills required for everyone to benefit.

With regard to the performance appraisal component of the proposed bill, parents are pleased that once again this government has recognized that as the clients of the publicly funded education system, parents and students are deserving of an opportunity to contribute their input from experiences both in and out of the classroom in a meaningful way in terms of providing information that would form part of the appraisal process. The parental and pupil input aspects of this bill would provide the regulatory power for our input to be taken into account by a principal or supervisory officer as a formal part of the appraisal process. Of that we're tremendously supportive.

In addition, where a pupil or parent makes the request, words or names that would identify the parent or pupil would be required to be removed from the document prior to it's being provided to the teacher. This provision would ensure a higher rate of participation on the part of parents and students in the process by reassuring those who choose to participate that they would not be subject to retribution of any kind should their input be honest, but less than complimentary.

It became crystal clear in the last round of public consultation leading up to the creation of regulation 612, in December of last year, the new school council regulation that governs school councils across the province, which ensures that parents have meaningful input into education policy on a local level, that parents do not want to be the administrators of their sons' and daughters' schools. They clearly expressed their desire to leave administrative issues in the hands of professionals and

experts who are hired to perform these functions. They do not want to hire and fire administrators or teachers. What they do want is for their input with regard to the performance of these key individuals in the education system to be heard in a meaningful, formal and positive manner.

This bill would provide that balance, as it prescribes that parental or pupil input cannot be the sole factor in an unsatisfactory rating, or in the dismissal of a teacher. What it therefore would provide is an opportunity for honest client input into the services rendered, a critical component in any successful evaluation which is undertaken with the purpose of providing for opportunities for improvement.

In summary, we support the provisions of this bill, particularly those pertaining to standardization of the qualifying test, and the formal and meaningful input of parents and pupils in the performance appraisal system itself.

I'd just like to add that I'd like to say a special note of thanks to Barry Pervin, of the Ministry of Education, and all of the stakeholders who are working on the working groups surrounding the performance appraisal—the client consultations and the performance appraisal development itself—for providing an opportunity for us to be part of that stakeholder group. I think that's a classic example of where we can all work together—parents, administrators, teachers, the Ministry of Education itself—in looking out for the best interests of our kids.

Thanks very much. I'm open for questions.

**The Chair:** That affords us just over two and a half minutes per caucus for questions. We'll start with Mr Levac.

**Mr Dave Levac (Brant):** Mr Reid, I apologize for coming in at the very beginning of your session there, but I did catch the gist of your presentation.

I noticed on your presentation sheet that this letterhead appears to be that of the government, or is this the official letterhead of the Ontario Parent Council, set by the ministry?

**Mr Reid:** That's the official letterhead of the Ontario Parent Council. We're an advisory body appointed by the Minister of Education.

**Mr Levac:** My understanding is that's from the regions around the province, so there's representation from the council across the province?

**Mr Reid:** Yes. There are 20 members of the Ontario Parent Council: three are appointed by provincial federations, being Ontario home and school, Parents Partenaires en éducation and the Ontario Association of Parents in Catholic Education Ontario; another six are regional representatives, who are elected at regional assemblies; and the remaining ones are appointed at large in order to reflect the diversity of the province.

**Mr Levac:** I am concerned, as a principal on leave, about some of the statements being made. Other than when you say that you clearly do not have a desire to administrate buildings, schools, teachers—fire, hire—

have you taken an official position as a parent council on those parents who do want to?

**Mr Reid:** No, we haven't taken an official position in that fashion. What we heard clearly from the last round of consultations leading up to the school council regulation in December of last year, what we heard clearly from parents across the province and what that last consultation led to was the clear definition—

**Mr Levac:** Delineation.

**Mr Reid:** Absolutely. The parents don't want to administrate the buildings. What they do want to have is an opportunity for meaningful input based on their experiences as stakeholders in the education system.

1600

**Mr Levac:** As a principal, I can assure you that, depending on each individual school and school board, parents always have had a say in schools to the best of my knowledge. I do have a very important question for you. How old do you think a student should be when they start making written submissions to this process?

**Mr Reid:** We're pleased with the fact that it says that it will be senior students. So, from an elementary standpoint, that would be students in grades 7 and 8 and beyond.

**Mr Levac:** So grades 7 and 8 students are old enough to make critical comment on teachers' professional performance?

**Mr Reid:** I'm certain they could make some input as to what they liked and what they didn't like about the way the teacher presented the caseload to them.

**Mr Levac:** OK, thank you. That's all for me, Mr Chairman.

**Mr Rosario Marchese (Trinity-Spadina):** Thank you, Mr Reid. Nice to see you again. You're a regular here.

**Mr Reid:** Getting to be, unfortunately.

**Mr Marchese:** The whole issue of parental input in the appraisal system: as I understand it, boards can seek anonymous opinions from parents and students about a teacher's evaluation, which could lead to abuses, in my view. Do you think they should be anonymous? Do you think they should be much more in the open, allowing teachers and everybody else to see those opinions, or what?

**Mr Reid:** No. Basically, I would take issue with saying that they are seeking anonymous input; it's not to be anonymous. Our understanding of the system is that there would be a name attached to each appraisal submitted by a pupil or a parent. The parent or the pupil, under the legislation, would have the right to request that their name be withheld from the teacher in order to prevent any opportunity or any possibility of retribution.

**Mr Marchese:** Which seems fair. On the other hand, how does one judge the fairness of an opinion, the validity of an opinion, and how does one rebut against such an opinion if indeed it could be an unfair one or a judgment on a teacher based on who knows what? How would you ensure, put into place, a system that somehow allows the teacher to rebut?

**Mr Reid:** This is, again, the provision that states that a single parent or a parent opinion expressed in the form of a submission could not be the sole mitigating factor in the dismissal of a teacher etc.

**Mr Marchese:** I understand that.

**Mr Reid:** So what that does provide for in our estimation is that there will be an opportunity for the teacher to respond to a specific submission. The only exclusion will be the parent's or pupil's name from that submission. I would hazard a guess to say that if one or two individuals came forward with condemnations of a particular teacher it might be taken in the context that, well, maybe these individuals have somewhat of an axe to grind.

**Mr Marchese:** And if a parent has the right to not put the name down in terms of an opinion, how do you fight that?

**Mr Reid:** Again, I'll take issue with the way you phrased that. The parents or the pupils will attach their names to each submission. They have the right to have that name withheld from the teacher seeing it in order that there not be any opportunity for retribution in terms of any pressure that the teacher may put on an individual.

**Mr Marchese:** They have the right to have their name withheld. So how do I, as a teacher, deal with that? I just deal with an opinion without attaching a name to it?

**Mr Reid:** The way we understand the bill is what the teacher will be dealing with is a formal process where anybody will have the right, any parent or senior pupil will have the right, to make a submission. That will become part of the performance appraisal process, but only one part of it.

**Mr Marchese:** I understand that. I didn't misunderstand that. I'm just alerting you to a possible problem that it causes, and I was wondering whether you're concerned in any way for a potential abuse or not. What I'm hearing from you is that someone will offer an opinion, the parent has the right to withhold the name, but it shouldn't be a problem because, as you argue, it's only a component or a small component of the evaluation process. So we shouldn't worry, is what you're saying.

**Mr Reid:** I'll give you a personal experience where I had an issue with a teacher of a nature that I felt was significant and made comment to the principal, who in turn made comment to the teacher and attached my name to it. I was subjected to numerous late night phone calls of a harassing nature, unidentifiable, and other issues of what I would consider to be somewhat harassing nature. That wouldn't have taken place had I had the opportunity for an open and honest performance appraisal component where I could make a submission that would be considered in that fashion.

**Mr Garfield Dunlop (Simcoe North):** It's good to be here again today and, Greg, I want to thank you for making your presentation.

I want to say to you: as a fairly new organization I know you've got a Web site that's up and running and I believe you have some staff now as well to help with it. As far as things like your Web site and comments coming back from parents, students and any stakeholders

across the province, are you getting a lot of response to basically the formation of this committee or your organization as a council?

**Mr Reid:** In the last month since we launched a Web site—just about a month ago now—we've received more than a quarter of a million hits on our Web site. Over 36,000 of them were of a user nature where they used our Web site to find information through links. We have also identified that the most popular aspect of our Web site right now is the comments section—the feedback section—by far. I haven't got the numbers in front of me, but tens of thousands of people, parents across the province, who have accessed our Web site have provided feedback to us. So there's a tremendous response to our providing an opportunity for parents to have feedback in the system.

**Mr Dunlop:** Can I ask you very briefly: what are they saying about Bill 110?

**Mr Reid:** What they're saying in overwhelming numbers is that they believe that teacher testing and the concept of teacher testing is a good one and particularly that parents want the opportunity to have meaningful, clear and concise input into the system from a positive nature. As clients of the system they want to be able to provide their critique without any fear of retribution.

**The Chair:** Thank you, Mr Reid, for appearing before us here this afternoon.

#### ONTARIO TEACHERS' FEDERATION

**The Chair:** Our next presentation will be from the Ontario Teachers' Federation.

**Mr Dunlop:** Mr Chair.

**The Chair:** Forgive me. While you come forward, Mr Dunlop had indicated he had an issue.

**Mr Dunlop:** It's concerning the committee's schedule of the next little while. I just want to read out. I believe there is agreement among the House leaders for this committee to give clause-by-clause consideration to Bill 77, Ms Churley's private member's bill, this Wednesday, December 5, 2001. My understanding is the agreement is for up to 90 minutes of committee time to begin after consideration of Bill 110 and before the committee begins public hearings on Bill 122. Perhaps the committee could ensure that its schedule reflects this agreement at today's meeting. I understand that's coming from our House leader's office.

**The Chair:** If there's agreement to that effect, we don't need a motion?

**Mr Marchese:** I'm assuming that's an agreement that you had from our House leaders. Is that what you're saying?

**Mr Dunlop:** Yes, the three House leaders.

**Mr Levac:** Was that inclusive of the clause-by-clause for 110?

**The Chair:** That would be after 110.

**Mr Dunlop:** After 110, yes.

**Mr Levac:** Yes, in agreement.

**The Chair:** It's agreed? The schedule shall so reflect.

Thank you very much for your indulgence and welcome to the committee.

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**Ms Ruth Baumann:** My name is Ruth Baumann. I'm on the staff of the of the Ontario Teachers' Federation, and with me today is my colleague Kathleen Devlin.

The Ontario Teachers' Federation welcomes the opportunity to appear today before the committee. We want to offer the views of the organization on the amendments in Bill 110 pertaining to teacher performance appraisal and the qualifying test for entry to the profession. The federation represents 144,000 teachers in the publicly funded elementary and secondary schools of Ontario.

OTF supports the direction of the proposed legislation to demonstrate to the public that there are accountability measures in place to ensure the quality and effectiveness of teaching in Ontario. The Ontario Teachers' Federation believes that the expectation for accountability is compatible with the principles of justice and due process.

This afternoon, however, we want to comment on several key issues as they relate to the proposals.

OTF supports an effective teacher performance appraisal system to improve teaching performance and to provide a framework to encourage teacher professional growth for the benefit of students in our schools. We welcome the opportunity for teachers to work with principals on growth plans that will focus on individual teacher professional needs as well as on ministry, board and school needs.

We appreciate that the legislation outlines the necessity for clear communication regarding expectations, reasons and timelines for performance appraisal, and we are pleased that the legislation differentiates between the appraisal cycle for beginning teachers and the cycle for more experienced teachers.

We would like to suggest that in the implementation the performance appraisal programs have to distinguish between the different stages of different teachers' careers. As a colleague of ours is wont to say, "A beginning teacher is a beginning teacher." You can't expect somebody to come out of pre-service training knowing everything that somebody who has been there for 20 years knows; the expectations for people have to bear some resemblance to the kind of experience they've had. Similarly, the performance appraisal expectations must be adaptable to different contexts such as occur when a teacher is requested to teach outside of the area of certification or to take on a particularly challenging class.

One of the unintended consequences of not having some adaptability around those expectations for different contexts would be to discover that the teacher you very badly want to move from grade 2 to grade 6 because you need a grade 6 teacher isn't willing to go, because they're worried that they'll be going into a situation that they may not have taught in for a number of years and they're concerned about what will happen in the performance appraisal process.

For teachers under review, the time allotted for each step under the review process we think may be difficult

both for the evaluator and for the teacher being evaluated, particularly in a time of rapid administrative turnover. We understand that the people working on the performance appraisal process hope that it will be impervious to changes of the administrators, but I think any ongoing evaluation process is one that requires a high degree of consistency around communication and expectations. With some of the turnover we have right now, we can see people having to go backwards and start over or catch up with what previous administrators have done.

The legislation provides for rating a teacher on a scale that is to be determined under regulation. OTF would like to say today that most successful teacher performance appraisal models and systems make use of a satisfactory/unsatisfactory rating scale. There is little research evidence to support more detailed rating scales. Indeed, subtle differences in performance are much harder to assess objectively and tend to be more subjective on the part of the evaluator. Systems with multiple point scales therefore also tend to place onerous time demands on the evaluator.

We said earlier we're in a time of rapid change, particularly of teachers, but even more so of administrators in schools right now. That means that we have a very widely variable set of skills and experience among the people who will be charged with doing these performance appraisals. We would like to urge that wide variation in experience be taken into account and that appropriate in-service and in-school time be provided both to teachers and evaluators about the new process.

As the previous deputant has talked about, there is a proposal in the legislation for the inclusion of parent and student input. We believe that it's critical that any parent or student input is managed in such a way that it is able to inform teacher practice. The previous deputant talked about the possibility of retribution by the teacher. We would also like to urge that it be managed in such a way that it doesn't provide opportunities for retribution by students and parents in situations where there may have been some disagreement with the teacher. Should a decision be made to include information from anonymous surveys—and I understand from the previous exchange that's not what the people believe is there—we believe in either case it will be important to ensure that parent and student questionnaires themselves not be used for dismissal purposes; that the information gleaned from them may be the impetus for further investigation. We believe that any mandated use of parent or student input is likely to raise major concerns of confidentiality and due process and may in fact be counterproductive.

The government needs to recognize that the resources required to implement a new province-wide performance appraisal system are significant. We talked earlier about the need for in-service for teachers, principals and vice-principals. One of our concerns is the time required. In my teaching days, I taught in a school with 140 teachers. That school, in the last few years, has experienced anywhere between 15 and 20 new teachers a year in the

school as teachers have been retiring, and has probably seen a turnover of more than 50% of its administrative staff. For that school to evaluate in any one year upwards of 40 teachers who would qualify as new teachers in their first two years, as well as a third of the remaining 140, is going to be a major task given the resources that are there for in-school administration right now.

Unfortunately, what I would call the zero-sum feature of the present financing system means that the additional resources for in-school administration, if they are to be allocated, will come from other parts of the system such as the classroom, special education or transportation, to name a few. There is little flexibility in the current funding model for new demands, and the existing financial benchmarks are sadly out of date. We would urge that the government consider implementing the teacher performance appraisal program in stages as appropriate funding support is available.

The legislation requires that all students graduating from an Ontario faculty pass a qualifying test before being eligible to receive a certificate of qualification from the Ontario College of Teachers. The federation believes that Ontario's faculties have worked to ensure they are providing the best possible teacher preparation. Since the establishment of the college, the faculties have undergone extensive accreditation reviews to ensure that their pre-service programs are both appropriate and rigorous. The federation is not convinced that the introduction of a qualifying test will strengthen the calibre of teachers or of teaching in Ontario schools.

That said, and in view of the fact that the government has decided to proceed with the qualifying test, we would strongly urge that the first administration of the test be considered a pilot. This would allow the government to ensure that the test is both valid and reliable. It is important for the government to have full confidence that the test is valid, that it is not culturally biased and that there is no discrimination against minorities built into the test. Any questions of validity, reliability, bias or discrimination could bring an onslaught of legal challenges.

In addition, reasonable access to a wide range of test sites and test dates is essential both for pre-service students and for teachers from other provinces and countries so that the qualifying test does not become a deterrent to those interested in pursuing teaching careers in Ontario.

Finally, we think that introducing a consistent provincial performance appraisal process for teachers is a positive step. We note, however, that the process is limited to those teachers in the publicly funded schools and will not apply to teachers in the private schools. We believe the purpose of teacher performance appraisal is improved practice, that the main objective of any provincial model should be improved teaching, and that teacher performance appraisals should be directed by what is in the best educational interests of students.

The provincial policy that is adopted should make specific provision for human and material resources to support the improved practice. The responsibility for

improvement should not lie solely with the teacher, but equally with the other partners in the system. In this way, the policy should foster a culture of learning and support. The policy should reflect the complexity of teaching and should recognize that there is no single model of quality teaching.

In conclusion, the Ontario Teachers' Federation believes that good teaching is the essential ingredient of student success and achievement and must be a key building block for better schools.

**The Chair:** Thank you very much. That affords us time for a quick question from each caucus, about a minute and a half.

**Mr Marchese:** Thank you, Ms Baumann, for your presentation. I agree with a number of things that you've talked about, including my concerns around the anonymous nature of parental input and the implications on teachers. I agree with the fact that resources are going to be needed. I was very concerned about the fact that most principals will spend their lives doing performance reviews, in addition to everything else they've got to do. I'm not sure how they're going to do it.

With respect to the qualifying test, I'm assuming, based on what you say, that you have no sense of what that test is going to look like, who's going to set it. I'm assuming the ministry hasn't talked to you or anybody else about how that would look or may look, and that it worries you as much as it worries me.

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**Ms Baumann:** There is a fair bit of public information about the qualifying test. There is a contract that has been let for the development of the test. My understanding is that the test will deal with the broad features of the Ontario curriculum. In its case study section, it will have some material that's geared to candidates who are in primary, junior, intermediate or senior divisions, but the test will not, for instance, test knowledge of the subject content for secondary school teachers. There is a fair bit of information that's out there about the test right now.

**Mr Marchese:** But you are worried about the fact that government needs to have full confidence that the test is valid and not culturally biased and that it does not discriminate against minorities. That's a worry for you.

**Ms Baumann:** It is our understanding that all of the organizations that have been involved in consultations have urged that the first administration be considered a pilot and that the company that has the contract for the test development has also urged that the first administration be a pilot, for all of those reasons.

**Mr Norm Miller (Parry Sound-Muskoka):** Do you think it is important that parents and students have input into appraising teachers and commenting on the job that teachers are doing?

**Ms Baumann:** We think that input is something that many teachers already ask for and find useful in terms of responding to the way their work is perceived.

There are really serious concerns about how that process is handled. The fact that it is specifically built into the performance appraisal system, rather than being

set up as a separate feedback mechanism on its own, is the part that probably gives us the greatest concern. Often people don't know until two or three years later whether the experience was—we know what we think about it when we are in it, but many times it is two or three years later that we come at it with a much more objective assessment.

There are a number of those kinds of concerns. Teachers are very sensitive to the fact that they have to make decisions and evaluate the work of students every day. There is some legitimate concern that people will use an input process to say things that may not be appropriate.

**Mr Miller:** And I think—

**The Chair:** Sorry, Mr Miller. I'm afraid we're on a fairly tight timeline here. Mr Levac?

**Mr Levac:** I'll try to be quick as well.

Principals are good jugglers. Just to let Mr Marchese know that when you do have these tasks, most school boards in the province of Ontario, if not all school boards in the province of Ontario, did teacher evaluations and had a process in place that did first-year teachers, fifth-year teachers. Most of this stuff is not intrusive into what has happened in the teaching profession over the years.

Is it your opinion that the Ontario faculties of education, the Ontario College of Teachers, or even EQAO could handle this information instead of setting up a new government bureaucracy in terms of the testing? Right now the legislation, if I'm not mistaken, takes unto itself the setting of the tests and the marking of the tests. It goes right back to the ministry instead of any of the three functions.

**Ms Baumann:** At this point, I understand that the government has taken responsibility for the qualifying test, and the government has taken responsibility for the establishment of a generic provincial performance appraisal system. We certainly had no difficulty with the generic provincial performance appraisal system as a concept. One of the things that clearly was a problem before was that what was going on from board to board was very different. We thought it would be useful to be seen to be doing something that was consistent.

The question of who should administer the first qualifying test, whether that's the government's responsibility or the college's responsibility, is one that we have not had a lot of discussion about. We certainly would be concerned about the fact that if on an ongoing basis it was the college that was responsible for it, it would be the teachers who would be footing the entire bill. So there would be some concern there, I think.

**The Chair:** Thank you very much for coming before us this afternoon. We appreciate your comments.

#### ONTARIO PUBLIC SCHOOL BOARDS' ASSOCIATION

**The Chair:** Our next presentation will be from the Ontario Public School Boards' Association. Good afternoon and welcome to the committee.

**Ms Liz Sandals:** Good afternoon. I'm Liz Sandals, president of the Ontario Public School Boards' Association. With me are my colleagues Gerri Gershon, first vice-president; Rick Johnson, second vice-president; and Bob Williams, our director of labour relations. We're pleased to have the opportunity to address you this afternoon on Bill 110.

The association's mission is to promote and enhance public education for the benefit of all students and citizens in Ontario, and we believe Bill 110 will be helpful in that respect. We would like to focus our comments this afternoon on the performance appraisal section of the bill in particular.

OPSBA endorses the legislative changes proposed in Bill 110 that will result in a consistent approach to teacher and administrator performance appraisal, incorporating the exemplary practices which have existed in most public boards for many years. The three proposed amendments outlined below are intended to result in more effective implementation of the legislation by boards. We also make suggestions regarding the communication of the intent of this legislation to parents and students, and the need for comprehensive training of superintendents, principals and vice-principals. I would note that this report has been approved unanimously by our OPSBA board of directors.

First of all, the recommended amendments: with respect to the evaluation cycle, Bill 110 requires a three-year cycle for performance appraisals for experienced teachers. In the experience of most administrators in the boards represented by this association, the three-year cycle is unrealistic and unnecessary. We recommend a five-year cycle, with the provision that teachers' learning plans, as set out in the proposed legislation, be established and reviewed by an administrator on an annual basis. Principals would still have the ability to conduct more frequent appraisals if warranted in the opinion of the principal.

The performance appraisals described in the proposed legislation are very comprehensive and demand considerable administrator time. The number of school administrators has been substantially reduced by boards in recent years to comply with dollar allocations in the education funding formula. Many smaller schools have part-time or shared administrators, and many administrators carry part-time teaching responsibilities. It is feared that the requirement for a three-year cycle could lead to filling out the forms to meet the requirement, sacrificing quality of evaluation. We recommend that either a more realistic five-year cycle be established or that additional dollars be allocated so that all schools can have sufficient administrative time allocated to do the job effectively on a three-year cycle. We would rather see a longer time period in the interest of better quality of evaluation.

Secondly, with respect to the notice to the Ontario College of Teachers, Bill 110 would require boards where a teacher employed resigns while he or she is on review status to file a complaint with the Ontario College of Teachers regarding the reasons for the teacher having

been placed on review status. While we understand the intent of this provision, we are very concerned that most teachers who are on review would never resign knowing that this report was required and that they may have to publicly defend themselves at a hearing before the college.

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Currently, rather than terminate a teacher, boards will often accept a resignation by mutual agreement. This "counselling out" saves much time and substantial money that would otherwise be spent on legal bills in the termination and grievance and arbitration process, and it results in the departure of the teacher on review more quickly than is likely to be the case under the new legislation. In our opinion, boards will spend substantially more money on legal bills if the requirement to file a complaint with the Ontario College of Teachers is retained.

Under the legislation, boards will be required to obtain records of performance reviews of any teacher they might consider hiring who has received an unsatisfactory rating from another board. In our view, this requirement makes the provision to report to the College of Teachers unnecessary. We recommend that this provision be removed from the proposed legislation. Again, this is in the spirit of getting on with getting unsatisfactory teachers out of the classroom while at the same time being able to maintain track of unsatisfactory teachers so they don't pop up again somewhere else.

Finally, our third recommendation for amendment, the arbitration requirements: Bill 110 provides arbitrators with an open-ended scope for review of a case. Our experience suggests that such open-ended mandates are not helpful. We recommend that the scope be narrowed to state that the arbitrator should only determine whether there is a basis for the board to conclude that the teacher is not performing satisfactorily.

We have some other suggestions which don't necessarily lead to amendments.

First, with respect to the parent-pupil input we've been talking about in previous delegations, the proposed legislation provides for the possibility of parental and pupil input to the performance appraisal process. We have serious concerns that this provision will lead to a public expectation that a teacher could be terminated based on complaints by individual parents and students. We are also concerned that the collection of this information could prove to be very time-consuming for already overworked school administrators and that the anonymity of parents and students is fraught with potential legal and ethical issues which deserve complete discussion and careful scrutiny before a regulation is published under this clause. We suggest that our association and the other trustee, supervisory officer and principal associations, as well as the teachers' federations, of course, be consulted explicitly in the process to develop and approve regulations contemplated in the legislation under this section.

Training: experience in our boards over 25 years indicates that the key to the successful implementation of

a comprehensive performance appraisal system is the quality and intensity of the training provided for superintendents and principals and vice-principals. This need cannot be overemphasized. We suggest that the Ministry of Education provide the resources for and the necessary training prior to and during implementation. We suggest further that the training model be designed by a task group which would include expert practitioners from the boards. The training courses developed should be part of the required professional learning for administrators under the professional learning sections of teacher testing.

Finally, the qualifying test which has been mentioned by other delegates: we do support the teacher qualifying test, but we strongly recommend, as have others, that the first administration of this test be a pilot.

In conclusion, school boards across the province are extremely proud of the teaching and learning that occurs in our schools every day. Our administrators, teachers and support staff are exceptional, and we would match them against any other jurisdiction in the world. We believe that a consistent, timely performance appraisal process, together with an ongoing commitment to supervision and professional learning, are essential components in providing quality education. We will be pleased to co-operate with the Ministry of Education in the development of regulations and in the implementation of this important legislation.

Thank you once again, and I'd be pleased to take questions.

**The Chair:** Thank you very much. This round we'll start with the government for questions, and we've got just under two minutes per caucus.

**Mr Dunlop:** Thank you very much, Ms Sandals, for coming today to speak to Bill 110.

A lot of professions do a performance appraisal on a yearly basis, and we're advocating in our case three years. Your suggestion today is to go for a five-year performance appraisal. Other than the financial end, do you not think it would be much more consistent across the province if we do the three-year cycle, that we'd be able to determine better quality all around for teachers if we did it on a three-year cycle as opposed to the five?

**Ms Sandals:** First of all, the three-year cycle or the five-year cycle, whichever it would be, isn't something that happens once every three years and then goes away. In fact, within that cycle there is an annual requirement for the teacher and the principal to sit down together, look at the professional learning requirements of the teacher, have a conversation about what the teacher's goals for the year need to be, what's happening with that teacher, whether those goals are completed for the year. So it's not as though the principal goes away and just drops in once every three or five years; it's that the formal review process only kicks in at the end of the process for experienced teachers.

I think, given the pressures that we've got around teacher shortage—we have high turnover of teachers at this point just because of demographics—we agree with

the observation that we must look very, very closely in the first two years of a teacher's experience with a board at that teacher's performance, but the concern we have is that if we shorten that cycle, we'll detract from the concentration on new teachers.

There is a facility within the bill, as within current performance appraisal policies, that when a concern is raised by parents or by the principals themselves in visiting classrooms, there's always the ability to kick into the more formal review process when there's a problem. So what we want to do is deal with the new teachers, deal with the problem teachers, and let the more experienced teachers have a lengthier cycle so that we can concentrate where concentration is needed.

**Mr Levac:** Thank you, Ms Sandals, for your presentation.

My first comment to you, and then a question, is that as a principal I always told my staff that I was coming in to catch them doing great things. Quite frankly, I was never disappointed. But in my first year as a principal, unfortunately and fortunately, I had to put a teacher on review and go through the whole process, which was done properly, with everyone participating in this process, and I found out that it wasn't such an onerous task after all, as long as it was done properly and we followed board policy. The reputation gained from removing a teacher who shouldn't have been in the classroom was one of bad guy, good guy. It was unbelievable how you went from one school to the next and found out that you'd better be up to snuff or else this guy's going to take a look at you. I could do that every day if I needed to as the principal, because that was given to me in the regulations, to allow me to supervise teachers if I needed to do so. So a five-year cycle/three-year cycle means very little.

I support you in your five-year cycle, because there's a tremendous number—the vast, vast majority of our teachers, and those particularly with senior experience—who quite frankly do not need that supervision. What they're asking for, if I'm not mistaken, and maybe this is where you can comment, is simply accountability.

**Ms Sandals:** I agree with you that we need to concentrate on beginning teachers, who need a lot of support. They are new to the profession, and we want to make sure they're supported. We certainly want our principals and supervisory officers to be doing a thorough documentation where there is a problem, and be a little bit more relaxed about those where there isn't a problem and we already know they are experienced. Good principals, as obviously you know, do drop in on teachers all the time. That's their job. They keep an eye on things, so they do tend to know when there's a problem. That's where we want them to focus in terms of a formal review.

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**Mr Marchese:** One of the things that bothers me about what this government is doing is how they have politicized so many issues. It would seem to me the purpose of having a College of Teachers is to look at

issues of performance reviews, or even, for that matter, qualifying tests. For the government to be so interventionist disturbs me a little bit. I'm not sure whether that disturbs you, but I find the nature of what the government is doing not just micromanaging, but intervening. The fact that they are at the moment assuming the responsibility for the qualifying tests—they may or may not assign it to the College of Teachers, but the fact that they are in control disturbs me too. What is the purpose of the College of Teachers if not to do these things? Does it worry you a little bit?

**Ms Sandals:** I think it's a fair observation that there seems to be some problem sorting out roles. From our point of view, the College of Teachers should be concerned with professional certification and with discipline with respect to removal of certificates, but with the professional life of the profession. Boards are the employers, and as the employers, we understand quite clearly that we are responsible for performance appraisal.

For example, when we were dealing with Bill 101, we supported the requirement to report to the College of Teachers, because there's an urgent need there to report to the College of Teachers where there is evidence of sexual or professional misconduct, and to make sure the person is immediately or quickly removed from the profession. We see this as a slightly different issue, where boards need to exercise their management employer functions through performance appraisals. So I think we need a little bit of role sorting here.

**The Chair:** Thank you for appearing before the committee today.

#### ELEMENTARY TEACHERS' FEDERATION OF ONTARIO

**The Chair:** Our next presentation will be from the Elementary Teachers' Federation of Ontario. Good afternoon and welcome to the committee.

**Ms Phyllis Benedict:** My name is Phyllis Benedict. I'm president of the Elementary Teachers' Federation. I have with me today our general secretary, Gene Lewis, vice-president Ruth Behnke and executive assistant Susan Thede. Thank you for the opportunity to be placed on the agenda today.

Since the government announced its intent to implement teacher testing in Ontario, our federation has worked diligently to develop proposals that would provide real accountability and have a direct and positive impact on teacher competency and student achievement.

Two years ago, in our response to the teacher testing proposal, Ensuring High Professional Standards in Ontario Education, we proposed three key initiatives: enhanced teacher professional development, a mentoring program for new teachers and a standard provincial model for teacher evaluation and professional growth.

More recently, the federation has developed a school-based accountability model that builds upon our original proposals. Our alternative model provides a practical framework for ensuring teachers receive professional

development that relates directly to the learning needs of students, and ensures there are effective and transparent accountability measures in place. Our model also promotes a positive and effective accountability framework for teachers, based on ongoing professional development, professional growth and performance appraisal. We have brought copies of our alternative model for you to review, and I will speak to that in detail in a few more minutes.

The federation supports the principle of having one consistent province-wide performance appraisal framework for Ontario teachers. Unfortunately the model outlined in Bill 110 is not the positive model we advocate, and it presents a number of serious issues for teachers and for the school environment. With the rating scale, on which the government's proposed performance appraisal is based, the federation is concerned not only that such a framework suggests the complexity of teaching can be reduced to a single number or a single word, but also that the rating scale is yet to be defined by regulation and we are not in a position to determine whether or not it will be appropriate or not fair.

We are also concerned that a rating scale sets the stage for introducing merit pay, a concept that would prove extremely problematic and divisive for the profession, and based on examples from around the world, it doesn't work.

In regard to parental input, the federation believes parental and pupil involvement in the formal evaluation of teachers is inappropriate. While the government has indicated pupil involvement will be limited to grade 11 and 12 students, it has not closed the door to the process being opened to younger students.

The federation is particularly opposed to the provision that would allow parents and students to request that their comments about a teacher remain anonymous to the teacher. In such situations, teachers will be put in a position of not being able to adequately defend themselves against the complaint. Further, while the legislation stipulates that parental and pupil input will not be the sole factor in giving a teacher an unsatisfactory rating or in recommending termination, the bill is silent about exactly how much weight it will be given.

In regard to the under-review process, the federation believes the time frames governing the under-review process of teacher performance appraisal are too rigid. We believe the efforts of school administrators will be concentrated on meeting time frames, rather than what they do now, which is working with teachers to assist them with professional growth and positive change. This is particularly true of the provision that gives a principal and a supervisory officer the authority to waive a third appraisal during the under-review phase. This would allow school boards to terminate teachers on an extremely summary basis after only two evaluations that may follow closely one after the other.

The legislation also lacks the flexibility necessary to address the complexities of particular teaching situations. The legislation would prevent school boards from re-

instating a teacher on conditions or continuing the review process. Therefore, some teachers may be terminated and ultimately forced to abandon their profession when the issues leading to termination could have been resolved with more positive support, or were possibly based on personality conflicts or philosophical differences between the teacher and his or her evaluator.

In regard to the entry-into-the-profession test, we find it's basically fulfilling the Premier's promise that there will be a teacher test. No professional body in Ontario, including the College of Teachers, agreed with the concept of teacher testing, and the concerns that have been echoed by other presenters are also found within our federation. At a time when we're facing a teacher shortage, this is not making the profession of teaching any more attractive.

I would like to take a few minutes to briefly outline our alternative accountability model, to show that there is a better way to go.

Our integrated approach connects the performance goals to both the larger provincial framework and to the local school board and to that individual school reality. It involves professional service providers and teachers in developing plans, and provides for appropriate relations between teachers and their education partners—parents and district school boards. It makes important connections between learning and evaluation.

It establishes a larger framework by tying performance assessment to the provincial model that sets performance goals and expectations. It addresses local realities by connecting those performance goals to school action plans that are developed together by school administrators, teachers and parents.

Our model has the elements of a fair process for assessing teacher performance. It includes observation of teaching; identification and communication regarding behaviours and practices that require improvement; support and assistance to a teacher; and training for the evaluators to ensure consistency and fairness.

The ETFO model also includes consequences for failure to meet the expectations that are defined and communicated during the performance appraisal process. If teachers under review fail to meet expectations, their position with the school board may be terminated.

The best way to develop effective performance plans for growth and appraisal purposes is to directly involve the people whose performance is to be appraised. Our model for performance appraisal includes important input on the part of individual teachers, where they would develop and direct their own professional growth plan, which they would discuss with their principal at the beginning and end of the school year. They would also have input into any plan for improvement that is developed during the supervision stage of the performance appraisal process.

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In conclusion, the federation urges the government to respond to the issues addressed in this submission and to develop a fair and effective performance appraisal model

that supports the ongoing positive growth of teachers, and responds to both the professional needs of teachers and the important goal of ensuring students are taught by competent teachers. If the government does not respond to these issues, we predict the proposed performance appraisal model will result in an increase in grievances and needless energy spent on resolving time-consuming and costly management-labour conflict.

A teacher performance appraisal model can be designed to be supportive to teachers and at the same time recognize the needs and best interests of our students. The school climate will be a much more positive one for our students if teachers are provided with the appropriate professional development at the school board level and if the performance appraisal model in place focuses primarily on supporting teachers to continually improve their knowledge and their classroom practice.

We'd be pleased to answer any questions at this time.

**The Chair:** Thank you very much. That affords us just under five minutes. We'll say a bit more than a minute and a half per caucus.

**Mr Levac:** Thank you very much, one and all, for the presentation and the professional work you've done to come up with an alternative. You're aware, I'm assuming, that in the bill it says that the third appraisal, if it is chosen, is done by the principal. The superintendent disappears and doesn't become a partner in this. The principal recommends directly to the board on the firing of a teacher. Do you support that model?

**Ms Benedict:** No.

**Mr Levac:** Thank you. All principals I've met—and who I've been aware of and through my association with them—have looked for years for models of a consistency of the nature we are having described here. My concern is one of training and support for that group of principals who have to do this particular model that's going to be very comprehensive. I'm now hearing that principals are being hired who have maybe five years of teaching experience, which is actually the recommendation we've had for the earliest that someone can even apply to become a principal. Now we are hiring them with five years' experience. Do you believe something desperately needs to be done by this government to support a five-year teaching principal, usually at that level with a twin situation or teaching responsibilities as well?

**Ms Benedict:** It's taking the people who are committed to education and brave enough to step forward into administrative positions in these very difficult times and putting them basically in an impossible situation. Like you, I too in another, former life, was a principal doing evaluations. Even at that time, the training was sorely lacking in the mentorship we should give to beginning administrators. I had the good fortune of being with a principal who was an excellent evaluator and I learned from him. Not everybody has that experience.

We are forgetting there's a key part in the learning, whether it is a beginning teacher—if they pass the entry-into-the-profession test, that's one thing, but where are the mentorship programs to assist them in their first two

years? I look at the same thing with someone who is stepping into the role of vice-principal or principal. Where are the support mechanisms for those individuals? As you just pointed out, many of them have had limited classroom experience, and yet we know how desperately we need those people in the leadership positions. We're putting our schools at risk. We're putting our schools in a crisis position like we have never seen before.

**Mr Marchese:** A quick question: I'm assuming that this is a model, that these are suggestions you made to the government prior to introducing 110. Of course now it is in the form of a much more public document that you're putting out. It seems to me that if you want to produce something that's effective—we always say that, at least—you need to have on board, by and large, those who are going to be directly affected by it. You said that. We've always said that. Certainly, when I was a trustee, I heard that from everybody. We always were a bit careful in terms of what we introduced to make sure we had some buy-in. Your model seems to be a fair one to me. What did you get by way of a reaction when you introduced your suggestions to either the minister or to anybody else who may have listened to that?

**Ms Benedict:** We had a guarantee, as a trade-off for something else, that we would have, as teacher unions, real dialogue and input in the whole concept of teacher testing and however that may unfold from the point it was first announced. Unfortunately, like many of the other types of—I hesitate to use the word "consultation" because consultation usually means the parties working together for a common solution. Many of the concepts we brought forward fell on deaf ears. The minister was right in saying that our federation supports a consistent form of teacher evaluation. But that's the end of the sentence, because nothing else we put there do you see proposed in Bill 110. I would hazard a guess we won't see them in the regulations either.

**Mr Miller:** I'm curious about one comment to do with parental and student input, saying you thought that was inappropriate. I recognize they are clients of the system. I don't come from an academic school background, but I've run a resort in the past. One thing we did in our business, on a weekly basis, was surveys of our guests. We would use those surveys to try to improve the quality of the resort and the services we were providing to people. We also would use them selectively. So if we had one complaint made by somebody that was never, ever made at any other time, we probably wouldn't act on it, but if it was consistently made, we would likely act on it and try to make a change to improve the quality of what we were doing. I wondered if you could comment on why you think it's inappropriate that parents and students have some input into their experience at the school.

**Ms Benedict:** What we said we are opposed to is the input on teacher evaluation. Many school communities do have a long-time standing practice of doing exactly what you pointed out, of going with surveys into the school community, with parents, and even beyond parents, to see how that school community can continue to improve, and to act upon that.

Accountability with parent input and student input is what a teacher faces on a daily basis—and have regular input in the appropriate fashion. When it is timed to evaluation, I just responded to a question about school administrators finding they need to have more training and more mentorship to be able to do effective evaluations. Then I would hazard to ask, do we do the same thing for parents? Not just anyone can step into teacher evaluation and do it in as fair and just a process as we require.

**The Chair:** Thank you for coming before us this afternoon.

#### ONTARIO PRINCIPALS' COUNCIL

**The Chair:** Our next presentation will be from the Ontario Principals' Council. Good afternoon. Welcome to the committee.

**Ms Martha Foster:** Good afternoon. I'd like to thank you for the opportunity to allow us to present on behalf of the principals and vice-principals of the province. I am Martha Foster and I am the current president of the Ontario Principals' Council. I am also a practising principal who is seconded this year from the Thames Valley District School Board. I have with me Mike Benson, who is the council's executive director.

The Ontario Principals' Council is an ISO 9001 registered professional association that represents the principals and vice-principals in Ontario's publicly funded school system. Although our membership in the council is voluntary, we currently represent 5,000, which is about 95% of the practising school leaders in both elementary and secondary public schools across the province.

The Ontario Principals' Council supports the initiatives, any initiatives, that help to ensure the presence of high-quality teachers in our classrooms. As the instructional leader of the school, ensuring that all teachers for whom they are responsible are performing at the highest level of competence is one of the most important functions of the principal. Principals also assist teachers in areas where they need improvement so they may continue to grow professionally.

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The Ontario Principals' Council supports the introduction of a qualifying test for new teachers that will ensure all individuals entering the teaching profession have reached the minimum standard of knowledge required. In fact, the Ontario Principals' Council is directly involved in the test development and delivery, to ensure that the process involves Ontario educators and that the resulting test is a made-in-Ontario test and is truly valid for its intended purpose.

The requirement of the qualifying test for certification beginning in the 2001-02 school year, however, severely jeopardizes the validity of the test. Without a full cycle of the testing process, including the testing of all candidates at the end of their program, we run the risk of using a test that has not been properly validated for large-scale use,

with potentially devastating consequences for those education graduates who do not pass it.

We would propose that the test for the 2001-02 school year be a pilot test, that the requirement of passing the test by the candidates taking it be satisfied just by their writing the test and that it wouldn't be a requirement to pass or fail it.

The Ontario Principals' Council supports the intent of parental and student involvement in the performance appraisal of teachers, but we have serious concerns about the process. For example, in a school that would have approximately 100 teachers, a secondary school principal could be responsible for reviewing 40 teachers in any one year, and that is not an unreasonable estimation. Each of those teachers would be responsible for 75 or more students, which could result in 150 surveys for each teacher.

If you work out the math on all that, that could easily be—this is an underestimate—12,000 surveys to be analyzed, reviewed and shared with the teachers. This is clearly impractical. It would be impossible for principals and office staff, many of whom have been significantly reduced in the last few years, to manage a process involving thousands of surveys.

Our second recommendation, then, would be that an efficient process for the development, collection and analysis of parental and student input must be found or the administrative burden will make the exercise impractical.

In addition, any survey used in a teacher's performance appraisal must be credible, and it must be reliable. This can only be ensured if the surveys are not anonymous. Any survey given to a principal must be signed by the individual who completes it. This will provide the principal with a source to access if there are issues that he or she feels must be followed up.

Principals and vice-principals are on the front lines in the schools across this province. We have been working hard to introduce and implement the many reforms that have been imposed on the system during the past several years. We want to make sure that those reforms are in place and that they are working so that our students can learn, succeed and compete in today's demanding world.

We also request that the regulations, which will outline the procedures that will drive this act, be structured in such a way as to be manageable by the principals and vice-principals of Ontario. They will require time and training to properly implement any changes. School resources may also need to be reviewed, as the increased burden to an already taxed system may result in insufficient time for other necessary tasks to be performed.

That is a summary of our presentation. I would be glad to answer any questions from you.

**The Chair:** Thank you very much. That affords us about two and a half minutes per caucus for questions.

**Mr Marchese:** Thank you for your presentation. It's very useful, obviously. You're very supportive of these initiatives by the government, quite clearly, and the minister knows this.

**Ms Foster:** We have had conversations with her.

**Mr Marchese:** Of course. You express reservations today that I'm assuming you've expressed in the past, while this was being developed, to the minister.

**Ms Foster:** Correct.

**Mr Marchese:** They know you're very supportive. It would seem to me that when you have a very supportive group like yourselves, they would also listen to you when you have some critical suggestions to make in order for this to be effective, obviously. So when you raised the concerns you have raised with us, particularly but not necessarily just with the qualifying test—you say, "Without a full cycle of the testing process, including the testing of all candidates at the end of their program, we run the risk of using a test that has not been properly validated for large-scale use." It's reasonable.

My question is, when you raised this issue with the minister, what did she say?

**Ms Foster:** She was very attentive and was very supportive of our stance.

**Mr Marchese:** I see.

**Ms Foster:** Mr Benson would like to add to that.

**Mr Marchese:** Yes, please.

**Mr Mike Benson:** I think also that many of the things we've talked about and that we are suggesting be done are not carved in stone. There is a way within the legislation, at least as I understand it, whereby the qualifying test could be a pilot in the first year. What we are doing is, we're taking one more try, if you like, to convince the government to take that particular path.

**Mr Marchese:** Right. They're being tough on the exterior with the public because they want to make sure the public understands this is a real test, right? But quite possibly what we have is a soft minister who really understands these things and then hopefully through regulation might do exactly what you're proposing—we're hoping.

**Mr Benson:** Yes. I don't think we have any idea of that really. I think we're just pressing to get to the things we need listened to and try and influence as we can.

**Mr Marchese:** No, I appreciate that.

**Mr Miller:** Thank you very much for coming before us today. Hopefully, part of this process, as you've outlined, is that there is still time for amendments on these bills. Good suggestions will probably be taken in by the government and amendments will likely occur.

I'm interested in your point about complaints—not complaints, but the comments from students should not be anonymous to principals. I happen to agree with that. I'm not sure that's not the way it is in the bill, but I certainly think that makes sense. The principals, as the managers of the system and with knowledge of the kids in their school, should have the names. I think that's a reasonable idea, from my perspective anyway.

You commented on the workload. A few other people commented that they thought the test should be a pilot project in the first year. That has been made by a few different groups.

**Mr Dunlop:** Could you just elaborate a little bit more on recommendation 2, please?

**Ms Foster:** Sure, if I find out which one that was. Oh, that's the concern with the surveys, with the number. All we know is there is to be a survey. The numbers I gave you were based on the fact that every survey goes home to every student of the teacher and every parent of the students of the teacher. There might be a way to facilitate parental input without having to send one home to every single parent of every student. In a secondary school, any one teacher in one year could interface easily with 150 to 180 different students. The numbers become astronomical. There might be another way of going about it—I haven't seen it; I don't know how it's going to happen—so that it doesn't have to go home to every student's parent and every student.

**Mr Levac:** Thank you for your presentation, Ms Foster and Mr Benson. What is OPC's stance on the one clause that says the third appraisal, if necessary, is without the superintendent, and the principal will make a recommendation directly to the board for firing?

**Ms Foster:** We believe it would make most principals a little nervous, that they are the one and the only input into the dismissal of a teacher. We would support the superintendent being involved, especially if you've gotten to the process where you are into the third appraisal.

**Mr Levac:** I would assume the superintendent might be the person who was elevated through the system and has even more expertise or has some type of background in making sure that the board's policies are felt.

**Ms Foster:** And the bill allows for it, that the superintendent is involved. As soon as you get into a situation where you have someone under review and they're going through their appraisals—

**Mr Levac:** Only second.

**Ms Foster:** Correct.

**Mr Levac:** Not the third. It mysteriously changed back to strictly just the principal and the principal making a recommendation directly to the board on firing; correct? That means, if I'm interpreting this right, and the language is used the way it is, the principal doesn't even inform the director of education that he's recommending that a teacher be fired.

**Ms Foster:** You normally wouldn't. You would normally go to the superintendent, whose responsibility would then be to the director.

**Mr Levac:** To the director, but in that case the superintendent doesn't know.

**Ms Foster:** Any principal in this province, their superintendent would know.

**Mr Levac:** Oh, absolutely, but it's not written that way.

**Ms Foster:** Correct.

**Mr Levac:** Thank you. Do I have a couple more seconds?

**The Chair:** Literally.

**Mr Levac:** I'll make this very quick. In terms of the appraisals, is it just the numbers you're concerned with? Are there any other concerns that senior students, as

earlier described by somebody else, could include grades 7 and 8 students?

**Ms Foster:** So your question to me is what?

**Mr Levac:** Do you have other concerns besides just the sheer numbers of students giving evaluation or parents giving evaluation on appraisals?

**Ms Foster:** That was our main concern. Whether it dropped down to grade 7 or 8, most grade 7 or 8 students would be capable, depending on how the survey is formatted—we haven't seen a survey, but the survey could be formatted in such a way where they would give you very reliable input into the performance of the teacher.

**The Chair:** Thank you both for coming before us here this afternoon. We appreciate your presentation.

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### TAXPAYERS COALITION HALTON

**The Chair:** Our next presentation will be from Taxpayers Coalition Halton. Good afternoon and welcome to the committee.

**Mr Frank Gue:** Good afternoon, Mr Chairman and ladies and gentlemen. I'm Frank Gue, education chair of the Taxpayers Coalition Halton Inc. Through many years in industrial management I was responsible for training and appraising personnel. I also taught for several years at the college and university levels, and I have a lot of sympathy for teachers in the public system. I don't think I could hack that.

Bill 110 is a step in the right direction. Our concern is with the regulations that will flow from it, particularly concerning performance appraisal of teachers.

We appraise teachers to help them to turn out a good product, that is, to help them to get results. You're going to hear that word "results" many times in the next couple of minutes. Can the children read easily out of grade 2? Can they do long division, write a coherent sentence with correct use of a verb and a noun? Some educators tend to regard such questions as simplistic, incapable of identifying creativity and critical thinking, but inability to test some things does not excuse us from testing anything, especially when the things we can test determine whether or not our students can do those other things.

We have all heard the disgraceful statistic that over a quarter of Canadian adults are functionally illiterate. A century ago, I was surprised to learn in a report, only 10% or 15% were. Our teacher appraisal system must address and improve this deplorable result. The system under development is not likely to do this. If we continue this way, after all your efforts to reform education, you will fade into history as still another government—with a respectful nod to the opposition members present—that failed to improve education.

A performance appraisal must ask what results are being realized by this employee that support the enterprise objectives? But in education one cannot find an objective in the Standards of Practice for the Teaching Profession, upon which the appraisal process is based. In

some faculties of education there is no definition of education and no statement of an objective for teacher training. Therefore, the teacher appraisal process is inevitably based upon process instead of results.

I don't care in the least what process General Motors uses to machine engine parts. I just want my engine to do its job. But in teacher performance appraisal we talk a lot about process and very little indeed, if at all, about the result, which is a student better educated leaving than entering.

Because of this emphasis on process, not results, there is no connection between teacher appraisal and the EQAO results that should drive board improvement programs. Those board programs should drive school improvement programs, and school improvement programs should control the individual performance improvement plans for which the teacher and the principal are responsible. Unfortunately, there is no such linkage that can be traced from EQAO results to teacher appraisals. Many of the board improvement plans I have seen, with a couple of shining exceptions like Hamilton-Wentworth's, are merely lists of nice, and expensive, things to do, with no connection to measurable results, such as raising the district's average in math performance by X per cent in Y years.

Now to our other concern, which is the fate that awaits the politicians' well-intended policies. Our performance appraisal system will add to the \$80 billion per year Canada spends complying with regulations. A principal or other appraiser will spend somewhere between—a wild guess—100 and 400 extra hours per year, not including several of Ms Foster's points of a moment ago, covering thousands of data items. Add in several times that for teacher time. That might be OK if aimed at improving the education results rather than merely embroidering the process. Speaking from experience, I can assure you that a process dictated from on high that causes unreasonable amounts of extra work for the front line troops will be ignored. If it can't be ignored, it will be shortcut, or if it's disliked intensely enough, it will be subverted and sabotaged. That's from experience.

Now consider policy and procedures. I am keenly aware of the difference. You, the politicians, have set policy in Bill 110. But I urge you, entirely aside from Bill 110 but certainly including Bill 110, to find some means of ensuring that the good policies that you put in place are not avoided, ignored, shortcut, subverted or sabotaged in the regulations. I am pointing no fingers and accusing no officials, but many of the good folk on whom you depend for implementation of your policies have grown up in an education environment that does not serve us as well as we should like. That's why we're sitting in this room. With the best of intentions, they are still convinced that we cannot effectively measure teacher performance by results. With increasing desperation, unions and others are denying the value of performance appraisal. Well meant but poorly informed, they are attempting frantically to serve two masters: your policies and their honest belief in a poorer model of education.

This poorer model has things like student self-esteem and a pleasant school experience as its objectives instead of genuine accomplishment and challenge, leading to a full and satisfying life as informed citizens.

But do take heart, for among you are educators—scores, perhaps thousands—who do know better. You must find them and fashion a new spearhead with which to create a system that will support your policies. For example, 33 hours ago Professor Mike Fullan, in a long CBC interview—he's dean of OISE—explained how a pair of low-achieving Toronto core schools had made dramatic improvements in—guess what?—results. His success factors were, first, an emphasis on those results. Then he praised phonics; early testing; identification and correction of problems; constant comparison; teaching to get literacy, not teaching to the test; use of test results and appraisal to develop teacher improvement programs; and above all, the availability of inspiring, dedicated principals and teachers who can make it all happen. We must, Professor Fullan said, develop a continuous stream of such young teachers through the faculties of education.

Mr Marchese, I think you asked a question to the effect that "Should green people be promoted to principal?" I think I could point out that we had people at age 19, one of whom was my brother, flying Lancasters.

But in the meantime, we say there are scores of Michael Fullans in the system today working with their heads down, waiting for their time to come. This is the time and you can make it come.

In summary then, I am here on behalf of Taxpayers Coalition Halton to urge you, first, to direct your staff to insist that they appraise teachers to a small number of concrete results rather than a huge number of fuzzy activities and teaching habits. I have attached to my pass-out a sample of a performance appraisal typical of those used by the businesses and industries that pay the taxes that support you. It is simple, short, direct and aimed straight at results rather than activities. Please study it.

Secondly, please develop a policy about policies that will give you assurance that the good intentions you had when you wrote Bill 110, or any law, are not hopelessly diluted in the regulations that result.

Thank you for your time. I will answer any questions I can.

**The Chair:** That gives us about a minute and a half per caucus. This time we'll start with the government benches.

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**Ms Marilyn Mushinski (Scarborough Centre):** Thank you, Mr Gue. I appreciate your submission and like what you say about measuring for results. How do you introduce a performance appraisal system and establish results measurement, let's say, in the first year? Or do you do it over a period of time in order to truly, accurately measure the results?

**Mr Gue:** Ms Mushinski, I would do that over a range of techniques. When I was teaching, I used what I called micro-testing: every 15 minutes, every half hour, "Mr Bevilacqua, give us a definition of the standard deviation

and why you should be using it." That's a micro-test. There should be clearly identifiable bars or hurdles that a student partway through or all the way through grade 1 should be able to pass. I won't try to say what they are, but they can be identified. I identified a couple here. Clearly, to me, a student, unless severely disabled, should be reading quite well out of grade 2; that is the sort of thing. The more frequent these tests, the smaller they are and the quicker the feedback—behaviour management and behaviour reinforcement tell us: quick feedback, get the improvement right away. Three years? That's too long.

**Mr Levac:** Thank you for your presentation. I think you're describing something I learned maybe 20 years ago about mastery learning. The other terminology that I was taught to use was "behavioural objectives," whereby the sentence would start with: "The students will be able to blah, blah, blah at the end of this particular lesson" and that evaluation was taking place almost at the end of every lesson. Is that what I'm catching, what you're basically saying regarding teachers? If the students perform at such a level, the teachers should be able to have the students perform these tasks?

**Mr Gue:** Oh, I think so. Some of the tasks are extremely clear. Other tasks require a lot of teacher input by way of, can the student write a good paragraph? That is somewhat subjective but also largely objective. I think my answer to your question is largely yes.

**Mr Levac:** Yes. The one part that you mentioned tweaked me a little bit. I was a little concerned about self-esteem and some of the other—I think you referred to them as "fuzzies." I would respectfully suggest to you that's part and parcel of the students' growth and development, to achieve some of the things that we're talking about, which are the specifics of learning.

**Mr Gue:** Mr Levac, don't connect those two words directly, please.

**Mr Levac:** Fair.

**Mr Gue:** Certainly self-esteem—boy, we'd better have it. I would suggest to you, however, that what is sometimes heard from the educational establishment, that development of self-esteem will result in better academic performance, is exactly backward. Better academic performance will result in self-esteem. School should be enjoyable, but not necessarily every minute fun.

**Mr Levac:** I agree with you.

**Mr Marchese:** Mr Gue, there is so much to talk about, but two quick questions if I can: one, you said, and I agree, that when the process is dictated from high above—more or less I think it's what you said—

**Mr Gue:** Yes.

**Mr Marchese:**—it will either be ignored and/or subverted. You made the statement that's something that you experienced and that's a problem. That's what this government is doing in relation to so many issues, but particularly these two of qualifying tests and the appraisal review.

What are you saying to the government members, that they made a mistake in terms of doing it top down, or

that "Yes, it's a mistake but forge ahead and make sure the teachers follow it anyway," even though from your experience, and mine, to do so is to risk the fact that teachers may not be willing participants because they are feeling hurt?

**Mr Gue:** Well, Mr Marchese, I didn't say it would happen; I did say it could happen. There are certain things that have to be dictated from on high: "Thou shalt follow these and those accounting practices, period." There are no exceptions. Other things need much more consultation. The warning that I sound here is that if the procedures that develop from Bill 110 are made cumbersome or very hateable, they run a serious risk of being obstructed.

**Mr Marchese:** The Chair is allowing me some grace here, and I want to ask you another quick question. At some schools the performance, the results, are incredibly high; they probably have 80% or more. That's by and large in well-to-do areas, where they're either wealthy and/or professional.

My point is that in those areas they will do well, and not because they're focused on results so much as if you come from a professional class of people, by and large it determines the kind of result you're going to get. Are you saying we could accomplish the same thing in any working-class area where we have poverty or refugees or ESL needs, that we can do the same?

**Mr Gue:** Absolutely, yes.

**Mr Marchese:** We need you.

**The Chair:** Thank you for coming before us here this afternoon.

#### ONTARIO FEDERATION OF HOME AND SCHOOL ASSOCIATIONS

**The Chair:** Our next presentation will be from the Ontario Federation of Home and School Associations. Welcome to the committee.

**Ms Sue Robertson:** Thank you. The Ontario Federation of Home and School Associations, OFHSA, is a province-wide organization representing parents and children in the public school system. Since 1916, our members have been active partners with governments and educators in promoting the best for each student. Our members work with their home schools, with their district school boards and with various government ministries, advisory agencies and partner organizations to bring the input of our 14,000 members to the table. We are pleased today to offer the advice of our members regarding Bill 110, the Quality in the Classroom Act, 2001.

OFHSA members recognize the enormous impact that quality teaching has on the education of all students in Ontario, and we have supported quality pre-service and in-service programs for all teachers. Since 1978, it has been the policy of Ontario Federation of Home and School Association members that:

"A timely, effective and standard manner of evaluating teachers' teaching abilities be developed, considering the following—representatives of all the affected

parties (students, parents, teachers and school boards) be included in the process; that standardized evaluative criteria be applied province-wide; that mandatory training in the use of evaluative techniques be given to all those involved; and that responsibility for setting and maintaining teachers' standards be turned over to a professional body."

When the minister first requested that the Ontario College of Teachers offer its advice on the design of a teacher testing program, OFHSA members were represented at those discussions. We offered our input to the draft documents prepared by the OCT, and we also sent the minister our input when the OCT's final report was released. As well, in April 2000, our members set out recommendations about the process for developing a province-wide performance appraisal system that could be developed with the input of all groups affected by the plans, and offered input into the content of such a scheme.

Members called for a consistent, province-wide system that was based not on a paper-and-pencil test but on a review of a teacher's performance in the classroom. We asked that all stakeholders—parents, students, educators, trustees and ministry staff—be involved in the process of designing such a system. We also asked that the ministry provide training and resources both to implement the system and to help support the improvement of teaching practice through mentoring and support programs in the school.

There is a great deal about Bill 110 that we support:

That the new appraisal system will be applied consistently across the province;

That there will be an expectation that every teacher will be evaluated on his or her classroom performance once every three years;

That teachers will be required to develop a professional learning plan that sets out their own goals for improving their teaching practice every year;

That there will be some vehicle for the input of parents and students to be part of the review system;

That a consistent review process for teachers found to be unsatisfactory, including specific written improvement plans, timelines for remediation and removal, if necessary, will be implemented across Ontario;

That performance appraisals will be part of a teacher's file and will be required by school boards when hiring new staff;

That school boards will be required to file a record with the College of Teachers for any teachers who either have their employment terminated, or who resign while they are on review;

That all teachers new to Ontario will be required to complete a qualifying exam;

That all teachers new to Ontario will be evaluated two times in each of their first two years.

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The terms of the act also allow for detailed regulations that will support consistency of delivery for this program across the province, and will also provide the necessary

training and resources to evaluators to implement this program. Under the regulations, we support there being extensive training for all principals and vice-principals to carry out the appraisals; detailed criteria for every principal to use in assessing performance, including the five domain names and competency statements developed by the Ontario College of Teachers in consultation with other stakeholders; a standardized rating system; consistent guidelines with respect to teacher learning plans; consistent standards and timelines for evaluation; and a vehicle for parent and student feedback.

We also support the development, through ministry guidelines, of a list of indicators for each competency statement that will help evaluators recognize good practice; a series of "best practice" materials developed and shared with evaluators to help them complete this task—these could include how-to documents giving some direction to new principals and vice-principals about how to observe in the classroom—and a series of forms that can be used by all areas of the province to help maintain consistency.

The members of OFHSA support a great deal of what is in this legislation. We do, however, have some remaining concerns that need to be addressed in the implementation phase of the project.

First of all, the success of this initiative will depend on the kind of environment into which it is introduced. With Ontario's teachers already feeling under attack and undervalued, this plan may look like more of the same. Its potential to raise the bar and encourage excellence in teaching practice will be lost unless we can somehow tone down the rhetoric coming from both sides that makes education an us-versus-them environment. Somehow, teachers must be made to see the potential for professional growth that is inherent in the annual learning plan. They must be convinced that a performance appraisal done by a professional colleague in their workplace can help them to grow in their profession. They must be willing participants in their own performance appraisal and any follow-up activities that are suggested. It will be necessary for principals and teachers to develop a relationship in which talk about improvement is not seen as a threat to the teacher but rather as a tool to improve teaching practice.

One way the ministry can help get this message across is to back off on some of the rhetoric and political hype that seems to be saying there are lots of poor teachers to weed out, and that we have to force teachers to do this appraisal because they won't do it themselves. An important first step would be to stop using the term "teacher testing" for the project and replace it with something less confrontational. Both the client team and the design team working with staff on this project have suggested this change from the very beginning of the project.

The principals and vice-principals will need the same messaging. They will need training and support to feel comfortable that they are not just judging their colleagues, but setting up an environment that supports teaching excellence, an environment in which everyone

can improve. When the ministry sends out its implementation teams and runs training exercises, we hope the content of these sessions will reach beyond the nuts and bolts of what the indicators and rating systems look like, to how an administrator can support his or her staff to embrace this program as a way of building teaching excellence in themselves and their colleagues. Since we know that the number of teachers currently working in our system who may receive an "unsatisfactory" rating is quite small, we must emphasize in this rollout how the system can work in our schools to improve everyone's teaching practice. We are hoping that this program will focus the attention of administrators and staff alike on ways to help develop the skills of all the staff members in a school.

One piece of this legislation that is of particular concern to the members of OFHSA is the parent and student survey. We have heard a great deal of concern expressed about this part of the legislation. What OFHSA members had requested right from the beginning was that parents and students have a part in designing the teacher appraisal system, to make sure that it addresses the concerns they might have. Through the design team and the client team process, both of these stakeholder groups have had representation in the development of the program. Our members have not asked to appraise their children's teachers. We have also said that any parent survey must not lead to a teacher's dismissal, nor should parents be asked to evaluate the teacher's ability in areas where they have no expertise to do so.

During our meetings with the performance appraisal project team, we have consistently said that parents should only be allowed to comment on the things that they know something about, such as the teacher's communication strategies with students and parents, and whether they feel their child is challenged in the classroom. We see that the legislation, as it is currently worded, sets up a system whereby a parent survey can be used in part to trigger an unsatisfactory performance appraisal of a teacher. OFHSA members have some concerns with implementing this practice.

First of all, all parents must be informed about the ways in which their survey forms can be used. They must know that their comments will be passed on to the teacher and that their comments may instigate an investigation of a teacher's fitness to practise. They must also understand that if their comments form part of an action to dismiss a teacher, their confidentiality may have to be breached in order to meet a burden of proof in arbitration. Parents must understand that their participation in this survey is strictly voluntary, but that they must sign their responses and should only comment on areas in which they have first-hand knowledge. Parents should also be told the survey is also a vehicle to celebrate excellence that they have witnessed in a teacher's performance.

The last issue we wish to raise is workload. You may think this is properly the concern of the principals and vice-principals rather than the parents, but our members

are active volunteers in schools across Ontario. We've seen the workload of school administrators rise significantly over the last few years. We want this system to work, and we know that will require time in the day dedicated to training, pre-observation conferencing, observation and post-observation conferencing. It will require meeting with all teachers to develop learning plans each year and checking that the activities spelled out in them are happening.

OFHSA members believe the most important job the principal has is to help develop and support the teachers in his or her school and thereby support student learning and achievement. It is through their improvement that the results for students also improve. We urge the ministry to look at the situation of school administrators and find ways to help them fulfill this mandate. With so many experienced principals retiring at the same time as the implementation of this new program, the need to provide support to new principals and vice-principals for this role is great. We also have many smaller schools that, under the current funding formula, do not qualify for a full-time principal. It's very difficult to be the instructional leader maintaining a culture of excellence when you're not even in the school half of the time.

The workload attached to the parent surveys alone is significant. In a secondary school, for example, the principal would be collecting one survey from each parent for each of the teachers that his or her children see every year. In a school of 1,400 students, that would amount to some 11,200 surveys to evaluate and collate every year. Any support the ministry can provide to schools and boards to deal with some of these issues in the form of training, the provision of software and funding support for administration could help the program be successful.

One last area we wish the ministry to examine is ways to tie the new mandatory professional learning program to the teacher performance appraisal system. When a teacher is evaluating his or her goals and growth plan, it only makes sense to us that they also look at professional learning programs that will help them meet these goals. The two programs properly go hand in hand.

Home and school members look forward to the passing of this legislation, but we also await the detailed implementation strategies that will make it work. We believe this program is important enough to spend the time and the resources necessary to a successful launch. The success of our students depends on it.

Thank you, and I'll be pleased to answer questions.

**The Chair:** Thank you very much. That leaves us a grand total of only about two minutes. As is our practice, we'll give all the time to the party next in rotation, and that would be Mr Levac.

**Mr Levac:** Thank you for your presentation. You made reference to concerns you have about the survey. You're aware, as has been pointed out in the last little while, that you do sign the survey and it does end up in someone's possession as a signed document, but the legislation then says it should be returned to the teacher unsigned or whited out or whatever you wish. Does that

satisfy your concerns yet, or are there are still deeper concerns beyond just the confidentiality?

**Ms Robertson:** I think if teachers are getting survey forms that have good comments, then it doesn't matter if they're signed or not. It's only when there's an issue raised. Our concern is if a form is not signed by the parent, and then at some point in the process it is used as part of an on-review process or part of a teacher's being removed or losing their job. What will happen to that evidence in court when it goes to arbitration if it's an unsigned piece of hearsay evidence?

The other thing is, if at some point the parent who filled out the form turned it in and it was going to be known who had signed the form, because the teacher has a right to face their accusers, then the confidentiality falls apart. Parents have concerns about what will happen with other teachers in a school where they have been personally involved in the removal of a teacher, and the way their students might be dealt with at a school.

**Mr Levac:** I personally would say I recommend strongly that you stay on the course of concerns for twin schools, no secretaries in school buildings for a long period of time. The things you're talking about are very instrumental for small schools and even large schools.

**The Chair:** Thank you for coming before us here this afternoon. We appreciate it.

1740

## ORGANIZATION FOR QUALITY EDUCATION

**The Chair:** Our next presentation will be from the Organization for Quality Education. Good afternoon and welcome to the committee.

**Mr John Bachmann:** Good afternoon. My name is John Bachmann. I'm president of the Organization for Quality Education or OQE for short. We're a group of parents, teachers, school administrators and taxpayers who have been working for 10 years to improve the learning outcomes of all Ontario students, but particularly those from disadvantaged backgrounds. OQE has also been part of the client group involved in the development of the teacher performance appraisal process that is at the heart of this act.

We think that Bill 110, the Quality in the Classroom Act, has a chance to live up to its name, but only if those tasked with drafting and implementing the regulations pertaining to the act remember the reasons why this legislation was necessary in the first place. Those reasons fall into two major areas: (1) the need to remove incompetent teachers more quickly from our schools, and (2) the need to improve student learning.

The standardized teacher performance appraisal system that is part of Bill 110 can bring worthwhile improvements to our publicly funded school systems. As things stand, each year thousands of Ontario students pay the price for our schools' long-standing inability to deal expeditiously with the incompetence of a small fraction of teachers. Transferring incompetent teachers from

school to school within a board when parental complaints become too loud or allowing them to move from board to board will become far less likely with the implementation of well-defined performance appraisals and record-keeping processes that should result from this bill.

We must, of course, ensure that teachers are not denied due process. Many marginally effective teachers can be remediated to competence and even proficiency, given early identification of problems and implementation of effective corrective actions by administrators and support staff. But for the small percentage of irretrievably incompetent and unmotivated teachers, OQE applauds Bill 110's intent to get these individuals out of our schools as quickly as possible to minimize the damage being caused to their students. This damage can be considerable and falls disproportionately on low-achieving and disadvantaged students. One recent study shows that one year of seriously incompetent teaching hinders top students by a quarter grade level, but low-achieving students by an alarming half grade level.

A common performance appraisal process can also have a positive impact on the second major reason for Bill 110, the improvement of student learning. Currently, teacher performance appraisals are done very inconsistently throughout the province. It is not unusual to hear of teachers who haven't been evaluated for five, even 10, years. In addition, the quality of appraisals varies widely between evaluators, schools and boards. For the vast majority of competent and accomplished teachers, this is not so much a problem as it is a missed opportunity, an opportunity for individual professional improvement that can positively affect student learning.

In current human resources parlance, the term "performance appraisal" is actually something of an anachronism; instead, modern organizations speak of "individual development" or "individual learning plans," which are tied as directly as possible to the organization's performance goals. This is where the common "performance appraisal" process launched by Bill 110 holds the most promise. OQE hopes that the upcoming regulations will clearly define the need for performance appraisals to review how effectively teachers have implemented their own annual individual improvement plans that have, in turn, been linked to their school's improvement plans.

For example, individual teachers at a given school that has a goal "to increase the number of grade 3 students achieving levels 3 or 4 on the EQAO mathematics tests from 60% to 70%" in the annual improvement plan, can be asked, "What can you do differently in your classroom this year to support that goal?" The answers to this question, which become actions in the teacher's annual improvement plan, may involve the use of alternative methodological approaches and may necessitate external training. OQE believes this student-learning-focused approach to identifying teacher learning needs will be far more effective in improving student learning than the arbitrary, mandated learning requirements in Bill 80. That is why we continue to lament the passage of that recertification legislation.

OQE fully supports the inclusion of parental and also, at the secondary level, student feedback. We believe any parental survey should be very simple, to facilitate translation into the many languages spoken in the homes of Ontario students. One of the survey questions must address parental perceptions of student learning. The question could be worded: "My child is learning to his/her full potential with this teacher. Strongly Agree, Agree, Disagree, Strongly Disagree." However, we do not believe that negative parental opinions should ever be the sole reason for the termination of a teacher.

OQE also hopes that as those running and working in our publicly funded school systems gain a more complete understanding of modern quality management—and I was certainly heartened to hear that the Ontario Principals' Council is ISO registered, because that's a very good first step in this direction—they will become open to using multi-year, value-added analyses of student test scores as part of the basis for the performance appraisals of individual teachers. We have tried to bring this into the client group, but we are still a minority opinion there.

OQE's concern for improved student learning also underpins our support for the requirement for a qualifying test for new teacher candidates. However, the effect on student learning will be minimal unless the right things are tested. For subject specialist teachers, the prime need must be to demonstrate mastery in the subjects they will teach. For primary teachers, the overriding need must be to demonstrate competence in the use of effective methodologies for the teaching of reading, writing and arithmetic. But this will be no easy matter. We have heard anecdotally from a number of school principals that graduates of Ontario, and indeed all Canadian, faculties of education are not being adequately prepared to teach these primary subjects.

We hope that a properly constructed qualifying test will identify these shortcomings in our faculties of education and cause them to respond by modifying their programs of studies appropriately. The results of such school-university collaboration can be quite gratifying. In El Paso, Texas, where school districts worked with a local teachers' college to address poor test results, over a five-year period the achievement of all students improved markedly. But even more significantly, the gap between white and Afro-American or Hispanic students was reduced by two thirds.

To conclude, the Organization for Quality Education supports Bill 110 and looks forward to the development and implementation of supporting regulations that will bring improved quality to Ontario classrooms.

**The Chair:** Thank you very much. That affords us just over two minutes per caucus for questions.

**Mr Marchese:** I was impressed with one of the objectives of your organization that speaks to "working for ... years to improve the learning outcomes of all Ontario students, but particularly those from disadvantaged backgrounds," because that's my concern.

What you point out is that there is a small fraction of teachers who are incompetent, and that if we could just

weed them out, outcomes would improve. So you're saying just a small fraction could cause these kinds of—

**Mr Bachmann:** No, that's not what we are saying. The small fraction has a dramatic effect on a minority of students, because there are so few incompetent teachers. That's not the issue. However, the performance appraisal process, by linking teacher appraisals to the school improvement plans, has tremendous potential for improving the student learning of all students, but particularly the disadvantaged.

**Mr Marchese:** Your point is like Mr Gue's. If you just have the right teaching methodology—because you talk about that—and possibly a good standardized appraisal system with a qualifying test, we are likely, at the end of this process, to achieve greater outcomes for all our students across Ontario. That's what you say.

**Mr Bachmann:** Those factors are contributory, but they're not all the factors that impact.

**Mr Marchese:** What else?

**Mr Bachmann:** Parental input, the parental involvement in the schools.

**Mr Marchese:** How do we fix that?

**Mr Bachmann:** How do you fix that? By making parents more welcome in the schools.

**Mr Marchese:** How do we do that?

**Mr Bachmann:** There are many ways. Principals do that very well already. But in some schools—

**Mr Marchese:** Shouldn't we standardize that, though?

**Mr Bachmann:** No, of course not. There has to be autonomy at the local level in how we deal with meeting the goals of the particular schools. These are professionals. They need professional discretion.

**Mr Marchese:** So if we have a—

**The Chair:** Thank you, Mr Marchese. Mr Dunlop.

1750

**Mr Dunlop:** One of the other presenters a little earlier talked about the performance appraisal being done on a five-year basis, and of course our time frame is to have it done on a three-year basis. I'm just wondering, do you support the three-year or the five-year, or do you have any comments on that?

**Mr Bachmann:** It really doesn't matter. Three years would be nice, but as a number of speakers have pointed out, there's a tremendous load being introduced here, especially if the performance appraisal tools are very cumbersome. It could be quite a challenge—

*The division bells rang.*

**Mr Bachmann:** Are you people heading for the chamber or something?

**The Chair:** We've got 10 minutes.

**Mr Bachmann:** Ten minutes? OK.

That's not as important as what happens every year as part of the process. You've got the school improvement

plans and you've got the individual teacher improvement plans. The review of how well those are meshing should occur within the performance appraisal process. If that occurs every three years or five years, it doesn't really matter that much, as long as it does happen consistently and regularly, whatever the time frame.

**Mr Levac:** Thank you for your presentation. I appreciate it very much, and it's straightforward.

Your inclusion of parental participation in the appraisal process—you're very clear that negative parental opinions should never be the sole reason for the termination of a teacher. Does that mean they would be accepted as long as they go hand in hand with the rest of the appraisal that's being done through the process?

**Mr Bachmann:** Yes. We've been told by a number of principals that they presently use parental feedback regarding teacher performance as what they call the red flag, something that starts the performance appraisal process that's already in place.

**Mr Levac:** Do you include students on top of that? It's been suggested today—

**Mr Bachmann:** For secondary students, we believe they have valuable things to contribute that should be taken into account.

**Mr Levac:** Just for the record, my questions in that area never negated the fact that I welcomed—as a principal, I always welcomed student participation and parental participation. As a matter of fact, I encouraged it before anything else. But where I drew the line was a concern when there was an agenda that appeared in my school, where somebody was out to get a teacher. Could I assume that this would be one of the areas in which you would be very concerned?

**Mr Bachmann:** Yes, but that is part of any situation where you're getting feedback from your clients, whether they're parents or customers, about how your company or your organization is doing. There are always going to be the outliers. There are always going to be people who can never be satisfied, who are unreasonable. As an administrator, as a principal, you have to realize that's a lone voice and it's not representative of the feedback you're getting from other people, so you discount it. So it's not an issue.

**The Chair:** Thank you for coming before us here this afternoon. We appreciate it.

One quick procedural matter, committee, if I could have your agreement. An oversight in the subcommittee report was the deadline for tabling amendments for the bill. I'm proposing it will be 1 o'clock tomorrow afternoon. Does that meet with the favour of the committee? It is agreed? Thank you.

Then this committee stands adjourned until 3:30 on Wednesday.

*The committee adjourned at 1754.*





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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

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# Journal des débats (Hansard)

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Wednesday 5 December 2001

Mercredi 5 décembre 2001

*The committee met at 1556 in committee room 1.*QUALITY IN THE CLASSROOM  
ACT, 2001LOI DE 2001 SUR LA QUALITÉ  
DANS LES SALLES DE CLASSE

Consideration of Bill 110, An Act to promote quality in the classroom / Projet de loi 110, Loi visant à promouvoir la qualité dans les salles de classe.

**The Chair (Mr Steve Gilchrist):** I'll call the committee to order for clause-by-clause consideration of Bill 110, An Act to promote quality in the classroom.

We will start off. Any debate or amendments to sections 1 through 3? Seeing none, I'll put the question. Shall sections 1 through 3 carry? They are carried.

Section 4: the first amendment is a government one.

**Mr Garfield Dunlop (Simcoe North):** I move that subsection 277.15(5) of the Education Act, as set out in section 4 of the bill, be struck out and the following substituted:

"Interpretation of part

"(5) Nothing in this part, or any regulation, guideline, policy or rule under it, shall be interpreted to limit rights otherwise available to a board relating to discipline of any teacher employed by the board, including but not limited to rights relating to reassignment of duties, suspension or termination of the employment of the teacher, whether or not a performance appraisal process relating to the teacher is being conducted under this part."

It's a technical amendment meant to add greater clarification.

**The Chair:** Further debate?

**Mr Dave Levac (Brant):** Could I get clarification of what? What are we clarifying?

**Mr Dunlop:** Have you got the bill in front of you?

**Mr Levac:** I have the bill, but I'm asking the purpose of the clarification.

**Mr Dunlop:** I'll read the rest of my points on it, OK?

**Mr Levac:** Please.

**Mr Dunlop:** I've got a series of them. I've lost my glasses, so—

**Mr Rosario Marchese (Trinity-Spadina):** I'll read it for you.

**Mr Dunlop:** As I said earlier, Mr Chair, it's a technical amendment meant to add greater clarification. The amendment would amend subsection 277.15(5) of the bill

in order to clarify the rights that would continue to be available to boards after Bill 110 comes into effect. The amendment expressly specifies that the rights that continue to be available to boards include the rights a board may otherwise have to reassign a teacher to other duties, as well as the right to suspend or terminate the teacher's employment. The amendment also clarifies that these rights of boards continue to apply irrespective of whether a performance appraisal of the teacher is being conducted under the performance appraisal scheme outlined in Bill 110.

**Mr Levac:** Does that include the concerns that were being raised by many groups outlining parent and student involvement in the appraisal process?

**Mr Dunlop:** No, it's not.

**Mr Marchese:** Ministry staff?

**The Chair:** I heard an answer to the question.

**Mr Levac:** So, having said that, I guess I'm asking whether that can be used as clarification somewhere down the line in case somebody does ask and then somebody can hold up the amendment and say, "Well, see? The rights are still there. There's nothing saying that parents or students can be"—I just want to reiterate, Mr Chairman, that there were comments made on the clause that said, "cannot be used for the sole purpose," and that there could have been some interpretations made by this amendment that it could be used as a rationale of saying, "See? This clause is taking care of your concern that you raised about parents and/or a student having impact on an appraisal beyond just information," and it not solely to be used as purpose for dismissal.

**The Chair:** I see we've been joined by two staff from the ministry, or potentially more. Perhaps, Mr Levac, if you wish to phrase a specific question? Then, to the staff, if you'd be kind enough to introduce yourselves prior to any answer for the purpose of Hansard.

**Mr Levac:** Once again, is there an opportunity for this clause to be interpreted as a solution to some of the concerns that were raised by many of the deputants regarding the clause that indicates that parents' and students' appraisal being provided during the appraisal process, their input, would not be used as the sole reason to dismiss a teacher?

Having read this clause, it simply means to me that it could be used to say, "See, we've simply reinforced the fact that the board has the sole responsibility to hire and fire and do all the things that the clause is saying to do."

I'm not saying that it clarifies it; I'm just saying, could it not be used as a vehicle to explain to those who express that concern that it's taken care of?

**Mr Barry Pervin:** My name is Barry Pervin. I'm with the Ministry of Education. I just wanted to say that I think the purpose of this part is really to, as it says, simply clarify that boards maintain the right to do the things that are listed in here. It simply clarifies that they in fact have that right. There's nothing in the bill that sort of takes anything away from that right that they have.

**Mr Levac:** I just kind of want to flesh that out a little bit more. I can appreciate what you're saying about this particular clause, but my concern is that it may be used as a rationale for the concerns that were raised in another part of the bill about parent/student involvement in the appraisal process and the fact that the concerns were the wording of the bill that said "sole purpose," that if I get a bad report from a parent and it comes into the board, that can't be used to dismiss a teacher. That's what the wording tells us, "sole," right? I'm saying that this could be read and, "See, we're not taking away any of the rights of the boards"; we're using this as a reason to say to the people who have concerns about that clause that I just described that it is taken care of by this. That doesn't take care of that, does it?

**Mr Pervin:** It doesn't take care of that concern. You're right.

**Mr Levac:** Very good. Thank you.

**Mr Marchese:** I didn't think it did, though. That's a separate issue altogether, I thought, and it's not addressed in any of the amendments. It continues as a preoccupation for some, including me.

I was interested in your point, because you felt you needed to add this section. Even though the boards have this power that is described here, someone felt that we should add a section in the event that there was some doubt, even though you argue there is no doubt about it, that the boards have this power. You felt it was important to add this language. Is there a reason why we're adding it if the boards have such a power already?

**Mr Pervin:** It was just for the purposes of clarity.

**Mr Marchese:** Even though you stated that it was clear that they have such a power.

**Mr Pervin:** It communicates to them that there is nothing in here that takes away from the power that they have. That was really the purpose of it.

**Mr Marchese:** I understand.

**The Chair:** Any further debate? Seeing none, I'll put the question on the government amendment. All those in favour? Are you with us, Mr Chudleigh? Opposed? That amendment is carried.

The second amendment also is a government amendment.

**Mr Dunlop:** I move that section 277.15 of the Education Act, as set out in section 4 of the bill, be amended by adding the following subsection:

"Transition

"(6) Nothing in this part, or any regulation, guideline, policy or rule under it, shall be interpreted to limit a

board's ability to complete a performance appraisal of a teacher begun before this part begins to apply to that board and that teacher, or to follow any process or take any action relating to that performance appraisal that the board might have followed or taken but for this part."

**The Chair:** Do you wish to speak to the amendment?

**Mr Dunlop:** Mr Chair, this amendment too is a technical amendment meant to clarify transitional matters. The addition of this subsection is meant to ensure that boards coming into the legislation's performance appraisal scheme still have the discretion to complete any teacher's performance appraisal process which they had begun before the proposed performance appraisal scheme outlined in Bill 110 applies to that specific board or teacher. The amendment also specifies that boards would be able to continue to follow any process or take any action relating to that performance appraisal that they would have taken but for Bill 110.

**Mr Levac:** This one I appreciate, because then you're talking about the process that most school boards have, which is about a three-year cycle in their supervisions.

Just so that I have clarity on it, if a review process was established before the declaration of the royal assent of the bill, the review process would take place completely without any of the portions of the bill taking effect?

**Mr Pervin:** The relevant point here is around the discretion. Boards have the discretion here to either—

**Mr Levac:** Jump in or stay out.

**Mr Pervin:** —jump in and move them into the next system or evaluate them on their own system. It's the discretion that they have.

**Mr Levac:** Having said that, if there's an opportunity for one versus the other, opting in or opting out, I'm assuming we would only be seeing that happen once, because if you start opting in and out, you would probably subject yourself to litigation?

**Mr Pervin:** I think that's right. You would either do it under the old system or do it under the new system.

**Mr Levac:** OK. That choice then would be declared so that the people who are under either review and/or appraisal would be informed of such?

**Mr Pervin:** Presumably the board would inform them of such, yes.

**Mr Levac:** Thank you.

**The Chair:** Further debate? Seeing none, I'll put the question on Mr Dunlop's amendment. All those in favour? Opposed? It's carried.

Back to you, Mr Dunlop.

**Mr Dunlop:** I move that section 277.40 of the Education Act, as set out in section 4 of the bill, be amended by adding the following subsection:

"Same

"(3) For greater certainty, a complaint made by a secretary of a board under this section shall be deemed to be a complaint made by a member of the public under clause 26(1)(a) of the Ontario College of Teachers Act, 1996."

Mr Chairman, if I could, the rationale behind that: the amendment is meant to clarify the reporting requirements

under section 277.40 of the bill. The amendment would clarify that for purposes of clause 26(1) of the Ontario College of Teachers Act, a secretary of the board would be deemed to be a member of the public.

**The Chair:** Further debate? Seeing none, I will put the question. All those in favour of the amendment? Opposed? It's carried.

Shall section 4, as amended, carry? It is carried.

Section 5.

**Mr Dunlop:** I move that section 287.7 of the Education Act, as set out in section 5 of the bill, be struck out and the following substituted:

"Interpretation of part

"287.7(1) Nothing in this part, or any regulation, guideline, policy or rule under it, shall be interpreted to limit rights otherwise available relating to discipline of any supervisory officer, principal or vice-principal, including but not limited to rights relating to reassignment of duties, suspension or termination of the employment, whether or not a performance appraisal process relating to the supervisory officer, principal or vice-principal is being conducted under this part.

"Transition

"(2) Nothing in this part, or any regulation, guideline, policy or rule under it, shall be interpreted to limit a board's ability to complete a performance appraisal of a supervisory officer, principal or vice-principal begun before this part begins to apply to that board and that supervisory officer, principal or vice-principal, or to follow any process or take any action relating to that performance appraisal that the board might have followed or taken but for this part."

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If I could just speak to some rationale behind that, under section 287.7, the technical amendments are meant to clarify the sections of the bill related to principals, vice-principals and supervisory officers in a manner similar to how government motions 1 and 2 would clarify the teachers sections of the bill. Like motions 1 and 2 that we presented earlier, this amendment relates to clarifying the rights that continue to be available to boards despite Bill 110 and clarifying transitional matters.

**The Chair:** Further debate? I'll put the question. All those in favour? Opposed? It is carried.

Shall section 5, as amended, carry? Section 5, as amended, is carried.

Any debate or amendments to sections 6 through 9? Shall sections 6 through 9 carry? Sections 6 through 9 are carried.

Shall the title of the bill carry? Carried.

Shall Bill 110, as amended, carry?

**Mr Marchese:** Mr Chair, on my part, is there an opportunity at that point to make a few comments?

**The Chair:** Always in order, Mr Marchese.

**Mr Marchese:** I just wanted to say that we're going to go through third reading, of course, and I don't want to belabour this point here because we're moving on to another bill, but we will be opposing this particular bill, and I want to make just a couple of brief points.

The manner in which this has been done in terms of qualifying tests and the appraisal system has been the most interventionist that I have ever witnessed, and in my view it's wrong. I've never seen a more top-down government, a more centralist government, than this one on this.

Just the other day, the minister for post-secondary education said she wanted to get the government off the back of the colleges and universities, and I thought, "How interesting. What an odd contrast between what the Minister of Education for elementary and secondary is doing, which is to get on the backs of teachers and the system, and at the post-secondary level the minister is saying we should get off their backs." It seemed like an odd oxymoron of politics that's going on. It has been centralist and interventionist in a dangerous way, I think, in terms of what we're trying to do for students, so I wanted to say that I disagree with that.

I disagree with the issue of parental involvement and tell you that you're making a mistake in terms of how you're doing it. The anonymous nature of the comments is dangerous, and while it has been clarified that it will not be used as the sole factor in giving a teacher an unsatisfactory rating, it doesn't speak about how much weight it will have. The anonymous nature is insidious, and I think it's wrong to do it that way, because rather than informing a system as to how a teacher can improve, it's more accusatory and it's not helpful.

I want to say as well that the College of Teachers is the body that should be dealing with these matters. That's why they are set up. That's why I, by the way, supported it. While many others opposed it, I supported the College of Teachers, and they are the body that should be doing this, as opposed to you, the government, taking it upon yourself to do it.

So we oppose it on these grounds and suggest to you that this is more political than educational in value, and it will not succeed on that basis. But I will speak to that when we get to third reading.

**The Chair:** Mr Levac?

**Mr Levac:** I'll be brief. I have a couple of comments.

I didn't see any amendments to take care of the concerns that were raised by many groups, the stakeholders, regarding the interpretation of "senior student." The president of the Ontario Parent Council, an arm of this government, basically told me, and if we check Hansard you'll see very clearly he believes, that a senior student is a grade 7 or grade 8 student.

In terms of making comment on a teacher's professional performance, I'm very concerned, not so much that a student should have a right—in my classrooms they always had a right to appraise me, because I asked them on a regular basis how I was doing. But for it to become a professional appraisal and part and parcel, I am concerned that that interpretation may indeed be expected. I expected an amendment for clarification and it didn't come, but at the same time, in not supporting the bill, I'm surprised that that particular voice didn't get heard. When grade 7 and 8 students are going to become

part of that professional development, according to the parent council chairperson, I think very specific clarifications need to be made as to what the expectations are of students being able to appraise teachers' performances.

The second part to that is regarding the process we've moved into, where the appraisal seems more of a burden than it does professional development. I would say the models that should be looked at are those that find teachers doing great things, as opposed to seeing if there are things they are doing badly that we can take care of. Training and professional development, particularly of principals who are moving into the system I daresay across the province—with only five years of teaching experience, they're becoming principals because of the problem we see ourselves faced with in finding good administrators, so there had better be some government support of professional development for that appraisal process. You are going to run into a major problem in the profession if you do not provide the appropriate training for the teachers and principals who will be going through that process.

The third thing I would suggest very strongly—I pointed this out and it didn't get mentioned at all—is that in the third phase of an appraisal and review being brought through, they've removed the superintendent from the principal's assistance during that third and final, critical time of a teacher's profession, as well as the attempts to improve the teacher. The superintendent is removed and the principal reports directly to the board on recommendation of whether or not they are terminated. That, in my opinion, is a very serious mistake and a flaw.

I recommend that the government and the members on that side do some homework before third reading. They'll find that indeed there are some problems that should be rectified before this bill comes anywhere close to being acceptable, not only to the profession but to the people of Ontario.

**Mr Dunlop:** I appreciate the comments made by the two members of the opposition. I want to thank the staff from the Ministry of Education for the number of times I've talked to you over the last couple of months about this particular bill, both in Minister Ecker's office and in the ministry office itself. I appreciate that and look forward to the debate on third reading.

**The Chair:** Further debate? Seeing none, shall Bill 110, as amended, carry? It is carried.

Shall I report the bill, as amended, to the House? Agreed. Thank you. I shall report the bill, as amended, to the House.

With that, we have concluded our clause-by-clause deliberations on Bill 110.

As you know, we had set 4:35 as the time to commence discussions on Bill 77. If everyone is amenable, we can move directly into that discussion. Well, perhaps it is best if we recess for five minutes.

*The committee recessed from 1619 to 1631.*

ADOPTION DISCLOSURE  
STATUTE LAW AMENDMENT ACT, 2001  
LOI DE 2001 MODIFIANT DES LOIS EN CE  
QUI CONCERNE LA DIVULGATION DE  
RENSEIGNEMENTS SUR LES ADOPTIONS

Consideration of Bill 77, An Act to amend the Vital Statistics Act and the Child and Family Services Act in respect of adoption disclosure / Projet de loi 77, Loi modifiant la Loi sur les statistiques de l'état civil et la Loi sur les services à l'enfance et à la famille en ce qui concerne la divulgation de renseignements sur les adoptions.

**The Chair:** Are we all assembled? I call the committee back to order for the purpose of further consideration of Bill 77. We are in fact going to consider clause-by-clause. I'll first ask if there is any debate or amendments to sections 1 through 5.

**Mr Dunlop:** Just some comments I'd like to read into the record, if I could.

Ladies and gentlemen, it's a pleasure to be here to take part in the clause-by-clause this afternoon. I would like to thank everyone for their input on this bill, particularly Ms Churley and the many witnesses who came before the committee to share their personal stories. We understand how difficult this can be.

I also want to say that Bill 77 has been a topic of extensive discussion within our caucus. What I'd like to do now is outline some of the concerns that have emerged out of those discussions.

Bill 77 proposes unqualified access to birth and adoption records by adult adopted persons and birth parents. This means that personal identifying information will be disclosed without the consent of the parties involved. This is a significant departure from the current adoption disclosure process, which is based on consent prior to the disclosure of personal information. Obtaining a consent for collection, use and disclosure of personal information is a fundamental component of an individual's right to privacy. This government has made a throne speech commitment to protect the privacy of the citizens of Ontario and hopes to introduce legislation to mandate such protection.

The amendments proposed by Bill 77 are contrary to the privacy principles this government supports by removing the requirement for consent and not allowing birth parents, adult adoptees or adoptive parents to prevent the disclosure of their personal information. These concerns are shared by the Office of the Information and Privacy Commissioner, who has provided a letter which outlines her concerns with the personal privacy implications of Bill 77.

We also have concerns regarding security implications. Our government introduced legislation to enhance security for the process of obtaining a birth certificate. Bill 77 potentially reduces the security of birth certificates by permitting the disclosure of information for birth registration, substituted birth registration and adoption orders, which could be used to access valuable docu-

ments and services. Even though we have these concerns, we have not moved to amend the bill. If we were to reconcile this legislation with our privacy and security concerns, it would result in legislation that would replicate the current adoption disclosure registry.

We recognize that this is a very personal and emotional issue for those involved. We also recognize that privacy and security concerns are cherished values that no one party would want to unduly compromise. The difficulty is that in trying to reconcile both of these important goals, we would be left with a bill that either protects privacy but doesn't substantially change the adoption disclosure system or a bill that opens up serious privacy concerns. It has not been our intention to offer amendments that push this bill to either extreme before it is reported back to the House.

As we outlined in our opening statement on the first day of hearings, this government has made substantial progress in improving the adoption disclosure system for both adoptees and birth parents. We look forward to today's clause-by-clause review.

Mr Chair, I appreciate the opportunity to read this into the Hansard.

**Ms Marilyn Churley (Toronto-Danforth):** I want to get on with the amendments, but I would like the opportunity to respond to this, and I thank Mr Dunlop for warning me in advance that this was coming.

I want to point out to people in our deputations, and I've pointed this out in letters to all of you, that a bill similar to this was passed in England in the 1970s. There is a list of jurisdictions, in Canada and across the world—Scotland, Wales, Northern Ireland, Israel, Argentina, Mexico, several US states and more coming on stream every month, it seems, Denmark, Holland, Norway, Sweden, Finland, Austria, Germany, France, New Zealand, Australia, British Columbia, Newfoundland, Northwest Territories, Nunavut—where such adoption disclosure has passed.

I've got to tell you, I did a little bit of research into comments from the privacy commissioner. It's her job to look at it from that point of view, but it's out of context of all the information we have before us about what has happened in other jurisdictions. It is interesting that privacy commissioners in many of those jurisdictions said similar things, but governments chose to take it as an important public policy issue and pass the laws anyway. All our research, as we heard from the deputants, told us that the concerns and problems that people raised never happened.

The other thing I want to point out about the letter—and I spoke at length before the hearings to the privacy commissioner, and she put some of those concerns in writing at that point. I was able to compare the concerns of the privacy commissioner with concerns from privacy commissioners in other jurisdictions, and they are very similar. One of the things I should point out to you is that she says it falls out of her jurisdiction, but since she was asked to comment she will anyway. She also says very clearly that this is a complicated situation and really what

it comes down to that this is a public policy issue for governments to decide, which is what other jurisdictions have done.

I thank the privacy commissioner for her comments on this, but I think the two important points for us to remember—and I'll reiterate them because this is so important—are that this has been done in many jurisdictions all over the world and some of the concerns that were raised have not come to pass.

Finally, on the comments about privacy, when you take it out of context and talk about this particular piece of legislation and the whole issue of security, it is very problematic for me and the many adult adoptees and birth parents who are here today to be put in that same category. We're talking about their privacy, their right to information being kept from them. What we are talking about here is unlike any other situation for any of us, that is, the right to have documentation that is about us. My son, who was adopted, should have the right to have information that is locked up somewhere about him. That is what this is all about.

If people read the package I handed out, when people raise concerns about privacy and confidentiality, first of all it's a myth; birth mothers were never promised that. In fact, we promised ourselves we would find our children someday. But we have put the contact veto in there for those very few—and of course we've now seen studies from all across the world showing that it works and there has never been a problem.

While I appreciate the concerns expressed, it really is being taken out of context in relation to the issues we're talking about here, that is, these people's right to information about themselves which we all take for granted every day. We're mixing apples and oranges here. It is very, very important that government members understand that, and it's our job as legislators to understand. We've all had the benefit of hearing from all the deputants and looking at the documentation, so we know the difference here, that there is no connection between what Mr Dunlop read out and the issues before us today.

So although I appreciate it being read into the record, and I know he was asked to do that, it really is important for us to remember that at the end of the day, the privacy commissioner said it is an important public policy issue that legislators have to make decisions about.

1640

**Mrs Leona Dombrowsky (Hastings-Frontenac-Lennox and Addington):** I would just like to offer very briefly a couple of comments with regard to what has been read into the record by Mr Dunlop. You made some reference to what your government has done to improve the adoption process in Ontario. However, I would suggest that if you and members of the government would review the presentations that have been made to this committee on Bill 77, very clearly and overwhelmingly the people of Ontario are saying that it needs to be improved. This is an opportunity for the government to do that. I would suggest that the people who have actually been affected by the laws you have chosen to

implement do not feel that they have been well served by them. I would suggest to you that the record would bear me out on that particular position.

I did not have the benefit of knowing that you were going to make reference to a letter from the privacy commissioner, but I am somewhat familiar with the purpose and the intent of the Freedom of Information and Protection of Privacy Act. I would only ask that the members of the government consider not just one part of that act but the other part, which refers to the freedom of information. I would suggest that what we have heard from so many participants is that there is information about themselves that they do not have, and they are asking this government to enact a law that will enable them to access information about themselves. This is information that you and I have about ourselves—perhaps we have. I know I do. Perhaps I'll speak just of my own experience. I was born into a situation where I did not encounter the circumstance of being adopted, so I have that information, I have the right to that information. I would suggest that all adults in Ontario should.

Again, with regard to the privacy issue, we have heard from experts and many people who have informed themselves on this issue that legislation and laws of this nature exist in many, in dozens, of other progressive jurisdictions around the world. I would offer to you that I'm sure that the privacy of individuals has not been violated in those particular jurisdictions simply because they have enabling legislation that enables people to find out information about themselves when they were born.

I offer those comments only in response to what was read into the record.

**Mr Mike Colle (Eglinton-Lawrence):** I want to confirm again that having read the literally hundreds of compassionate, heartfelt letters and e-mails from people across the province, I really find it difficult to endorse any attempt to basically deny people the right to get this information that they have a right to have, which is personal, which affects their health, affects their well-being, their families. For the government to say this should be denied basically on some technicality—you have a veto provision in the legislation that says if someone wants to be protected from releasing this information, they have the protection to avoid that with the contact veto in the act. The right to privacy is there. I would find it remarkable, given that of all the communication we've had I can't recall one where anyone is opposing this legislation. So for us to deny this legislation—and I hope you're not. I'm not sure what the statement was from the member, but obviously he's not speaking on his own behalf. He's obviously been given—

**Ms Churley:** They're going to pass this.

**Mr Colle:** Anyway, let's hope. I'm just worried because I found it to be a negative tone about the legislation. I just hope we pass it and it goes, because I haven't heard anything from the other side about this legislation. I'm just very concerned about that.

**Mr Dunlop:** Simply, there hasn't been unanimous support in our caucus for this particular piece of legis-

lation. It has been controversial. We thought that because there were concerns from different members of our caucus we should read something into the record. I don't know if every other caucus is unanimous in their support of this bill, but I'm just putting it on the record that we have concerns. We have had negative responses as well, and we've had many positive responses. I just wanted to clarify that. What I've read in stands.

**Ms Churley:** Mr Colle, you're quite right. You weren't aware of the circumstances here. We had the public hearings, which you sat in on for a while. Just before we came in, Mr Dunlop did tell me that he'd been asked by Mr Sterling, the registrar general, to read this into the record. I appreciate his telling me in advance, but I didn't have the opportunity to let other people know that this would be read into the record. That's fine.

I found my document now. It's page 2 of a personal letter I received from the privacy commissioner. She does say, "I am not unsympathetic to your position, especially after having spoken with you and then further exploring the adoption access issues you advanced. I understand that there is considerable support for openness in adoptions and adoption records. The appropriate balance between access and privacy in this context is a very difficult one to reach, and one that may ultimately be determined by social policy considerations," which is where we're at.

Finally, she talks more about what's involved in moving forward, and she clearly has done more research since we spoke: "As noted above, Bill 77 more closely resembles the current disclosure process adopted in British Columbia and in Newfoundland. Adoption amendments in both provinces have attempted to address the impact of retroactivity by allowing individuals the opportunity to come forward to file a disclosure veto preventing the disclosure of identifying information where adoptions occurred prior to the enactment of the legislation."

She talks about various vetoes and things that have been done in other jurisdictions. While she is recognizing again that if taken out of context there may be privacy issues, she looked at other jurisdictions and talked about vetoes as a way to deal with them.

Hopefully, now that we're all clear on that and that's in the record, we can move on to our amendments.

**Mr Levac:** Having said that, I just wanted to make an observation. I thought I was going to be at another meeting right now so I asked Ms Dombrowsky to sub here for me. I won't be voting on the amendments or the act tonight; Ms Dombrowsky will be taking my spot.

But in terms of an observation, I can't reiterate enough the true spirit and heartfelt emotions and the humanness that has been shared with me and touched my heart—first of all, I did not need to be convinced—with the passion given. I appreciated the sharing of that particular story. It's unbelievable to feel the type of life that had to happen for such a long time, and the outpouring of the story is something that should touch us all. We have the ability to rectify that in some small way, unfortunately

too late for some people, but at least to give them back the dignity they have so much desired. I want to show my appreciation to all those people personally, to thank you for allowing me to know that I did the right thing by being an elected member, to allow the people of the province to say what they need to say and to know that the people there are trying to serve them to the best of their ability.

I would also not pass judgment on those who have concerns that, for whatever reason they choose and for whatever happened in their hearts, they could not support this because of circumstances they're familiar with. I want to be very clear that I appreciate the position they take. I may not agree with it, but I deeply appreciate the fact that there may be circumstances or reasons they have to defend the position they take.

1650

Having said that, on the record I would like to congratulate the work that's been done by those who behind the scenes have worked very diligently and for a long time on trying to bring this particular piece of legislation up to date, into modern, 21st-century thinking. I congratulate Ms Churley for spearheading that from this position she holds. More importantly, for those who have had to go through that particular crisis in their lives, I thank you for your sacrifice.

**The Chair:** Further debate? Ms Churley, it's my understanding that you may have an amendment for one of the sections we're now dealing with.

**Ms Churley:** Yes, I have, in section 6. I don't have—wait a minute.

**The Chair:** I believe it's actually in section 1. This is apparently arising from other amendments that have been tabled. There is a consequential amendment that would be required. Since we're not operating under any time allocation motion, amendments are in order from the floor.

**Ms Churley:** I understand. This is an amendment that people don't have before them, but it was pointed out to me by legislative counsel that because of an amendment coming up, we need to amend section 1 of the bill, subsection 28(9) of the Vital Statistics Act.

I move that subsection 28(9) of the Vital Statistics Act, as set out in section 1 of the bill, be amended by striking out "subsection 165.1(3)" and substituting "subsections 165.1(3) and (3.1)."

It was just pointed out to me by legislative counsel that both the Liberals and I have an amendment coming up, based on some of the deputations we heard, that requires—right now, it is not mandatory in the bill for those who would submit a contact veto to give health information. It has become abundantly clear that that is an absolute necessity. To do that, we need to amend the bill to allow that subsection to be put in there. The other section will still allow any information other than health information to be non-mandatory. If anybody wants to write a letter explaining why they don't want to be contacted or send pictures and write things about the family, that's optional. But the amendments coming

forward would make sure that if you want a contact veto, the health information would be mandatory and that would have to be sent along with the contact veto.

As it has been pointed out to me by leg counsel, this is simply to allow that to happen.

**Mr Norm Miller (Parry Sound-Muskoka):** Are we going to have a copy of this amendment?

**Ms Churley:** It is just written out. It's technical, a technical piece to allow—

*Interjection.*

**Ms Churley:** Yes, based on the amendments we have coming forward. Did I get that right? I think I did.

**The Chair:** The clerk will make copies of the amendment. That will only take a minute.

**Ms Churley:** I apologize to everybody. It just occurred to us now that to accommodate that amendment to make health information mandatory and the other pieces optional, we need to add that section to the bill. It's purely technical to accommodate that amendment.

**The Chair:** While we're waiting for the clerk, are there any other questions relating to that amendment or to anything else in section 1? We'll restrict our questions just to section 1, since this amendment's been identified.

Seeing none, we will simply await the arrival of the clerk so that members will have the ability, as per protocol, to have a written amendment in front of them.

**Mr Norm Miller:** It sounds like this amendment makes sense, from what I get verbally anyway. If I understand it, even if a person files a no-contact veto, it would still be mandatory that health records be disclosed.

**Ms Churley:** Yes. We will be coming to that amendment next, I believe, but since section 1—

**Mr Norm Miller:** This relates to it.

**Ms Churley:** It's a technical amendment to allow that amendment to be put forward.

**The Chair:** Now that you all have copies of the amendment, are there any further questions? Seeing none, I'll put the question on the amendment. All those in favour? Opposed? It is carried.

Shall section 1, as amended, carry? It is carried.

Any further debate or amendments to sections 2 through 5? Seeing none, I'll put the question. Shall sections 2 through 5 carry? They are carried.

Section 6.

**Ms Churley:** I move that the heading to section 165.1 of the Child and Family Services Act, as set out in section 6 of the bill, be struck out and the following substituted:

"Contact Veto."

**The Chair:** Thank you. Do you wish to speak to it?

**Ms Churley:** Well, it's not all that significant. What we have now is "No-contact Veto." When you think about that, it doesn't make a whole lot of sense. This was recommended by various people, that we make the language clear so it simply says what it is. You can file a contact veto. That's more clearly what we're trying to say here. That's all this amendment is.

**Mr Norm Miller:** That's the more universal language in the other jurisdictions that have this?

**Ms Churley:** Yes. That's exactly right. It's more consistent with the language used in other jurisdictions.

**The Chair:** Any further comments? Seeing none, I'll put the question. All those in favour of the amendment? Opposed? It is carried.

The next amendments, marked pages 2 and 3, and 4 and 5, respectively, are identical; however, the Liberal motion was received first, so we will receive it from one of the official opposition members.

**Mrs Dombrowsky:** I move that subsection 165.1(3) of the Child and Family Services Act, as set out in section 6 of the bill, be struck out and the following substituted:

"Health-related information

"(3) The birth parent shall provide, together with the notice, a written statement that briefly summarizes any information he or she may have about

"(a) any genetic conditions that he or she has, and any past and present serious illnesses;

"(b) any genetic conditions and past and present serious illnesses of his or her own parents, of the other birth parent (or of the other biological parent, if only one person's name appears on the original birth registration as parent) and of his or her parents;

"(c) the cause of death and age at death of any of the persons named in clause (b) who are no longer alive; and

"(d) any other health-related matter that may be relevant.

"Other information

"(3.1) The birth parent shall be given an opportunity to provide, together with the notice, written statements of,

"(a) his or her reasons for not wishing to be contacted;

"(b) any other non-identifying information that may be relevant."

I think the amendment is self-explanatory. Members of the Liberal caucus had an opportunity to participate in the hearings and certainly this was an issue that was regularly referred to. I understand it is consistent with what is in place in other jurisdictions that have adoption disclosure laws in place. We believe it would make this bill a better law.

1700

**The Chair:** Further debate? All those in favour? Opposed? The amendment is carried.

As noted, the next amendment, therefore, will be superfluous and deemed to be withdrawn.

Shall section 6, as amended, carry? It is carried.

Section 7: any debate or amendments? Seeing none, I'll put the question. Shall section 7 carry? It is carried.

Section 8.

**Mrs Dombrowsky:** I move that subsection 176.1(5) of the Child and Family Services Act, as set out in section 8 of the bill, be amended by striking out "\$5,000" and substituting "\$10,000".

Very simply, this is again to make this piece of legislation consistent with what is in place in other jurisdictions. I don't have the information in front of me, but I believe that in British Columbia the penalty for someone who would violate a contact veto would be \$10,000. It

has been shared with members of the committee, as well, that in those jurisdictions where it is \$10,000, there has not been a recorded incident where there has been a violation of a contact veto. So it would appear that if that is the amount that works in another jurisdiction, it is probably appropriate that we would consider it here. I believe the Ontario Association of Children's Aid Societies was one of the agencies that thought it would be appropriate to amend the bill in this way.

**The Chair:** Further debate?

**Mr Norm Miller:** I agree with this amendment. I think it strengthens the bill, especially for those who are concerned about the contact veto and are worried about being contacted, the penalty being increased. Also it brings it more in line with other jurisdictions. I certainly think it makes sense.

**Ms Churley:** I support the amendment somewhat reluctantly. Just to go on the record again, I understand why this amendment is before us. Two things: information from other jurisdictions that have had contact vetoes for some time has shown that no matter what the level of the fine, there haven't been any problems. As you know from the hearings, there are many in the adoption community who feel, some more strongly than others, that this should not be in there, that this clause turns them into criminals if they contact somebody that anybody else is free to contact. On the other hand, we understand, which is why I put the contact veto in there, that most other jurisdictions have it, although newer legislation, interestingly enough, that's coming on stream isn't doing that, because the experience shows you don't need it.

But I understand that it offers that level of comfort to those who are concerned about privacy and confidentiality for the few who want it. I personally think, fortunately, given the information we have, nobody's going to ever have to pay that fine. It just hasn't happened anywhere else. Unfortunately, in all these reams of paper I have with me, I don't have the information I wanted to give you, and that is, I have levels of fines across other jurisdictions and they really vary. I understand that it is \$10,000 in BC, but in other jurisdictions it varies from \$2,000, and is all over the place. The good news is that nobody's been fined. So if it offers that level of protection, that indeed having the contact veto with that level of fine attached to it would strengthen and therefore help with the concerns around privacy that a few may want, then I will support it.

**The Chair:** Further debate? Seeing none, I'll put the question. All those in favour of the amendment? Opposed, if any? It's carried.

Shall section 8, as amended, carry? It is carried.

Any debate or amendments to sections 9 and 10? Seeing none, I'll put the question. Shall sections 9 and 10 carry? Sections 9 and 10 are carried.

Shall the title of the bill carry? It is carried.

Shall Bill 77, as amended, carry? It is carried.

Shall I report the bill, as amended, to the House? I shall report the bill, as amended, to the House tomorrow.

With that, the committee's business—

**Ms Churley:** May I just for a moment take the opportunity—can I do this? Is it within the rules?

**The Chair:** Absolutely.

**Ms Churley:** To all of you here who have been so supportive, it is not often we work together from all three parties on certain issues, are together to put something through the House that we all believe in. Ms Mushinski has been marvellous and very helpful. So has Mr Miller. Mr Dunlop and Ms Molinari have been very helpful and supportive.

**Mr Dunlop:** What about Ted?

**Ms Churley:** I don't know about Ted. Ted would mean to be but I don't think he was on the committee. But I'm sure he's very supportive, as well as Mrs Dombrowsky, Mr Colle and Mr Levac, and many others.

**Mr Colle:** And the Chairman.

**Ms Churley:** And the Chair as well, indeed. This has been a difficult process in the negotiations in the Legislature. I want to thank all of you who have, I know, put their heart and soul and time into trying to get this thing through.

Finally, I would request that you all continue to work just as hard and even harder, because the House is going to prorogue and we need to get this bill passed. So thank you all for this opportunity.

#### SUBCOMMITTEE REPORT

**The Chair:** Before everyone scatters to the winds, in deference to the fact that we have fairly limited time this evening, I wonder if I could have the indulgence of the committee and we'll deal with the subcommittee report that empowers us to hold the hearings tonight. In that way we won't cut into anyone's speaking time. Mr Chudleigh, as a member of the subcommittee, would you move the report?

**Mr Ted Chudleigh (Halton):** I'd be pleased to. I'd like to contribute to this committee meeting.

Your subcommittee met to consider the method of proceeding on Bill 122, An Act to conserve the Oak Ridges Moraine by providing for the Oak Ridges Moraine Conservation Plan, and recommends the following:

Re Bill 122:

1. That pursuant to the time allocation order of the House dated Monday, December 3, 2001, the committee meet for public hearings on Bill 122 from 6:30 pm to 9:30 pm on Wednesday, December 5, 2001.

2. That the clerk place an advertisement on the Ontario parliamentary channel and on the Internet.

**Ms Marilyn Mushinski (Scarborough Centre):** Dispense.

**Mr Chudleigh:** Did I hear a "dispense"?

**The Chair:** No, you can't.

**Mr Chudleigh:** I heard two "dispenses."

**The Chair:** Interjections are not now or ever appreciated or in order. Mr Chudleigh, please continue.

**Ms Mushinski:** It was Mr Chudleigh who asked me to do that.

**Mr Chudleigh:** Thank you for your attempt, Marilyn.

Additionally, notice will be provided to provincial newspapers by press release. The deadline for receipt of requests to make oral presentations to the committee is 5 pm on Tuesday, December 4, 2001.

3. That groups be offered 15 minutes in which to make their presentations, and individuals be offered 10 minutes in which to make their presentations.

4. That the Chair, in consultation with the clerk, make all decisions with respect to scheduling.

Given the last decision, I wonder if that's wise.

5. That each party provide the clerk of the committee with a prioritized list of potential witnesses, together with complete contact information, to be invited to appear at the committee's hearings by no later than 5 pm on Tuesday, December 4, 2001.

6. That the subcommittee determine whether reasonable requests by witnesses to have their travel expenses paid will be granted.

7. That there be no opening statements.

8. That the research officer prepare a summary of recommendations.

9. That the Chair, in consultation with the clerk, make any other decisions necessary with respect to the committee's consideration of the bill.

10. That the deadline for receipt of written submissions be 5 pm on Wednesday, December 5, 2001.

11. That the deadline for receipt of amendments be 8:30 am on Thursday, December 6, 2001.

**The Chair:** Any discussion? Seeing none, all those in favour of the adoption of the subcommittee report? Opposed, if any? It is carried.

With that, the committee stands recessed until 6:30 in room 151.

*The committee recessed from 1710 to 1834 and resumed in room 151.*

#### OAK RIDGES MORaine CONSERVATION ACT, 2001

#### LOI DE 2001 SUR LA CONSERVATION DE LA MORaine D'OAK RIDGES

Consideration of Bill 122, An Act to conserve the Oak Ridges Moraine by providing for the Oak Ridges Moraine Conservation Plan / Projet de loi 122, Loi visant à conserver la moraine d'Oak Ridges en prévoyant l'établissement du Plan de conservation de la moraine d'Oak Ridges.

**The Chair:** Good evening. I call the committee to order for consideration of Bill 122, An Act to conserve the Oak Ridges Moraine by providing for the Oak Ridges Moraine Conservation Plan.

Our first scheduled presentation will be from Save the Oak Ridges Moraine—STORM—coalition. Is Ms Crandall in attendance yet?

*Interjection.*

**The Chair:** We'll switch positions with the second group, because I see that they're in attendance.

## GREATER TORONTO HOME BUILDERS' ASSOCIATION

**The Chair:** Come forward to the witness table, please. Good evening, and welcome to the committee.

**Mr Jim Murphy:** Good evening, Mr Chairman and members of the committee. My name is Jim Murphy. I hope you can all hear me well. I'm director of government relations for the Greater Toronto Home Builders' Association. With me tonight is Jeff Davies, not Michael Melling, as is on your list. Jeff is a member of our Oak Ridges moraine committee at the Greater Toronto Home Builders' Association, and is also a partner with Davies Howe Partners.

I'm going to just provide a general overview. I hope you have all received copies of this. I think the clerk has distributed them. I'm just going to provide an overview and speak to the first point. We've identified four issues, and then we have some comments in terms of how some of those issues might be resolved. Jeff will take us through points 2, 3 and 4. If there's any time for questions, we'd be more than happy to answer them at that time.

The Greater Toronto Home Builders' Association represents 1,100 member companies in all facets of residential construction across the GTA. Residential construction and renovation is a key economic generator for the greater Toronto area, Ontario and Canada. Every year in the GTA, new residential construction sustains over 100,000 person-years of employment and contributes some \$6.2 billion to the local economy. Every new home generates some 2.8 jobs, is CMHC's statistic.

We have been actively involved in the discussions leading up to the legislation that is before you this evening for review, namely Bill 122, the Oak Ridges Moraine Conservation Act. We attended the public and stakeholder consultation meetings which were held throughout the GTA. We met with the government and with ministry officials, including members of the advisory committee, and responded to the draft recommendations of the Share Your Vision document that was released in August by the government.

As I indicated earlier in my introductory comments, the GTHBA has identified four issues with the draft legislation and wishes to offer solutions that are practical and fair.

The first issue is accommodating future growth here in the greater Toronto area. The legislation provides, as you know, for four different land use classifications, namely natural core, linkage, countryside and settlement areas. Some 60% of the Oak Ridges moraine will be protected from development in perpetuity as a result of this legislation. Even following a 10-year review, the legislation mandates that the size of the natural core and linkage areas cannot be changed or reduced. Further, only a very limited number of uses are permitted in the countryside area, with housing of any kind severely restricted. Only in the settlement areas, which is the fourth area, can there

be development allowed, and this represents only 8% of the plan.

I think it's important for you to note that the severity of these restrictions profoundly magnifies the importance of the following issue for governments: governments and elected officials, whether they be politicians or decision-makers working for government, cannot be against sprawl, whatever that may mean, and density.

The greater Toronto area is growing by 100,000 people a year. We're one of the fastest-growing urban centres in North America. These people have to live somewhere. The building industry—our members—do not create demand; we respond to the demand. The Oak Ridges moraine plan will in fact promote development further away from Toronto, as it will skip over a very large—a 160-kilometre-wide—swath of land through the middle of the GTA, to places like Barrie and Guelph, since so much land is now restricted from development of any kind.

I'll ask Jeff to proceed with the other problems. I should say on that issue, obviously, that we think the 10-year review must, in addition to protecting the core areas and the countryside areas and the linkage areas, examine the issue of intensification opportunities along the moraine where it makes sense if we want to promote that type of development.

I'll ask Jeff to talk about the other three issues.

**Mr Jeff Davies:** Members of the committee, if you look on page 2 of our submission, we identify a problem, and that is that there are inconsistent treatments of applications within settlement areas. Our recommendation is that those inconsistencies be resolved. That's because the legislation contains rules for planning applications which vary depending upon where the application currently stands in the approval system. The GTHBA wishes to emphasize that landowners and builders who were proceeding with developments before the freeze were following the law and planning processes which were then applicable. As a matter of general principle, they should be allowed to proceed under the rules that were in place at that time. There is an inherent unfairness in changing the laws retroactively.

**1840**

Notwithstanding this general point, a very specific problem arises in settlement areas. It's caused by the transitional provisions of section 15 of the act and the section 5.2(a) of the plan, because the latter exempts subdivision and zoning applications that were commenced before the plan takes effect. The problem is that as a matter of practice, some proponents filed their subdivision and zoning applications prior to May 17, sometimes in a bare-bones fashion, while other proponents were working with the municipalities in a pre-submission consultation for the purpose of filing complete applications, and these owners and proponents sometimes had not filed their applications as of May 17. The result is that two sets of development standards will apply in the settlement areas, and we say that's both unfair and impractical.

Two solutions are available. The first is to exempt settlement areas from the plan and allow development in those areas to continue under existing controls such as the TRCA's valley and stream corridor management plan, which imposes a well-recognized set of requirements on development near valleys and streams. The second solution is to amend the act to allow municipalities to deem applications to have been made as of May 17, 2001. It's suggested that municipalities be given until March 31, 2002, to make decisions on whether specific applications will be deemed to have been made. That would then treat them all on the same footing. Municipalities are in an ideal position to judge which applications should be deemed to have been made as of May 17, because their staff will have worked closely with the proponent in the pre-consultation process.

Next problem: applications were filed prior to November 17 and May 17, but additional applications are required in order to develop. The purpose of section 17 of the act as it is now is to grandfather applications under way prior to May 17. The problem is that the development process in Ontario, as I'm sure most of you know, requires a multiplicity of applications to achieve development. Sometimes not all of these applications are filed at once, and often zoning and subdivision applications are filed only after the official plan approvals have been obtained. As a result, the intention of section 17 is negated by its very own structure.

The solution: section 17 needs to be rewritten so that once a piece of land is grandfathered because applications were filed prior to May 17, the grandfathering will continue for the additional applications such as zoning and subdivision that are needed to actually develop the lands.

The last problem: mistakes need to be corrected. In some instances, the plan does not respect prior land use approvals. It's understandable that some mistakes would have been made, given the very tight time frame for the preparation of the mapping. The solution is to correct the mapping respecting pre-existing land use approvals.

We could have offered a lot more, but we recognize the time constraints and we thank you for your attention. We'd be more than pleased to respond to any questions.

**The Chair:** Thank you very much. That affords us about a minute and a half per caucus. This time we'll start the rotation with the official opposition.

**Mr Colle:** I guess the point you're making is that there are some inconsistencies in terms of the position applications that are in the queue, that some applications by this plan have been given the complete green light and others basically have been caught up and can't proceed.

**Mr Davies:** The way I'd put it is that some applications were filed prior to May 17, while other applications were being worked on in more detail and didn't get filed. As a result, the ones that didn't get filed are caught by rules that the applications that did get filed prior to May 17 are exempted from. So our view is that all the applications in the settlement area should be treated equally.

**Mr Colle:** What was your comment about the mapping, again?

**Mr Davies:** In some areas the mapping doesn't respect pre-existing approvals. For example, in the northeast corner of Nobleton, within the community plan, there was permission in the township of King's official plan for a golf course, and that area was mapped in a manner that would negate the golf course permission. So in that case, that area should be mapped as countryside to be in accordance with the Nobleton community plan and not take away those pre-existing rights.

There are probably other examples of that and we're asking that attention be given to the plans so that those problems can be corrected.

**Ms Churley:** Of course, you'll understand that this bill has now been time-allocated and we have very little time to do amendments tomorrow; just the morning and then anything else is deemed as passed and approved by all of us. So anybody coming before us, whether I agree with you or not, I expect that no changes are going to happen. Nonetheless you're here, and I thank you for your presentation. I'm interested in your comment on sprawl and density and that you can't be against both. I want to ask you, how can we do this differently? For instance, brownfield legislation, which is not adequate, was just brought in. We have brownfields in built-up areas. What is your association doing to work with the government to make sure that those lands are freed up and we can build in already built-up areas and not build on environmentally sensitive land and farmland?

**Mr Murphy:** Our members are very supportive of building in built-up areas. You may not know, but a third of all the home sales in the greater Toronto area are in the city of Toronto, in 416. That is something that is not equalled probably by any other North American city; maybe by Calgary or Ottawa because there are no suburbs. But in Toronto, the central city is responsible for a third of all the activity in terms of residential. That's because people want to live there; there are amenities that people want to be close to. Our industry, as I said in our comments, is responding to the desire of the marketplace for people to live there. We strongly support the brownfields legislation. We suggested in our appearance before this committee on Bill 56 that in fact some of the monies that were allocated to the waterfront perhaps be re-assigned and allocated to brownfield sites throughout the city, not just along the waterfront, to encourage their redevelopment.

We also think that municipal governments, including the city of Toronto, should be looking at promoting or expediting approvals for various applications or looking at some of the costs in terms of development charges and other things that may negate certain types of development, intensified development.

What we meant by that comment obviously is that we're growing by 100,000 people, they're going to live somewhere, and if you can't build high density in the city of Toronto along subway lines, where can you? That should be supported, but there are always going to be

people who want to live in a different situation with a backyard and open space, and that has to be provided for also. I don't know if that answers your question.

**Ms Churley:** If I had more time, I would continue, but I don't.

**Mr Dunlop:** Thank you so much for attending. Just very quickly, I'm interested in not just the Oak Ridges moraine but other moraines across our province. Do you feel the information that's in the bill, the Oak Ridges Moraine Conservation Act, should apply to other moraines across the province as well?

**Mr Murphy:** I was going to say that this is very uniquely specific geographically, and we have other legislation like the Niagara Escarpment legislation.

**Mr Davies:** I think one would want to be very careful before making any general statement and take a look at the land form in question and then offer perhaps more specific comments.

**The Chair:** Thank you very much for coming before the committee this evening. We appreciate it.

1850

#### FEDERATION OF ONTARIO NATURALISTS

**The Chair:** Our next presentation will be from the Federation of Ontario Naturalists. Good evening. Welcome to the committee.

**Mr Jim Faught:** My name is Jim Faught and I am the executive director of the Federation of Ontario Naturalists—FON, for short.

Before outlining our position on Bill 122, I would like to briefly explain who we are and what our role has been in initiatives to protect the Oak Ridges moraine.

FON was founded in 1931—70 years ago. We help protect nature in Ontario through scientific research, education and conservation action. We are a charitable organization representing over 20,000 members and supporters and 115 community-based organizations across Ontario. Twenty of those groups are located on the Oak Ridges moraine or in downstream watersheds.

FON long ago recognized the natural heritage importance of the Oak Ridges moraine and has been involved in the campaign to protect the moraine since 1991. We held a seat on the government-appointed technical working committee from 1991 to 1994, which resulted in the 1994 draft Oak Ridges moraine strategy.

More recently, since 1999, we have issued several publications encouraging citizens to take conservation action to protect the moraine. We have held numerous news conferences at Queen's Park. We have worked with other conservation groups on moraine issues. We have engaged the wider public in informed discussion and debate about protecting the moraine. FON held a seat on Minister Chris Hodgson's Oak Ridges moraine advisory panel, which met over the course of this past summer and whose work was the forerunner of Bill 122. Our most recent initiative was a public meeting which we hosted on November 22 in the city of Toronto about Bill 122 and the draft Oak Ridges moraine conservation plan.

After 11 years of study since the 1990 expression of provincial interest in the Oak Ridges moraine, it is very heartening to FON to have before us, at long last, draft legislation and a draft land use plan to protect the moraine. FON applauds the government for taking these bold steps. Bill 122 and the draft conservation plan are ground-breaking initiatives in that they represent leading-edge examples of ecosystem-based planning, embodied in the concept of four land use designations with a decreasing list of permitted land uses as one progresses towards the more environmentally sensitive designations.

The draft Oak Ridges moraine plan serves to direct development away from environmentally sensitive areas and to protect the moraine's vital water resources. It also intends to retain the current size of the most critically important environmental features, called natural core areas and natural linkage areas, together comprising 62% of the moraine, beyond the time of the proposed review of the plan 10 years from now. The draft plan virtually stops urban sprawl on the moraine by restricting almost all new residential development to existing settlement areas. Finally, and in some respects most importantly, Bill 122 would require that all planning decisions in the moraine planning area shall conform with the Oak Ridges moraine conservation plan. This wording is far preferable to that in the provincial policy statement under the Planning Act, which states that planning decisions must merely have regard to the policy statement.

FON is very pleased with the provincial government's level of support for the proposed Oak Ridges Moraine Foundation, which will help it secure certain lands, fund stewardship programs for landowners and engage in public education.

Notwithstanding what I have just said in favour of Bill 122 and the draft moraine plan, FON does have some concerns about specific provisions of both documents. We will restrict ourselves this evening to what we believe are the deficiencies in Bill 122 itself, rather than explain our concerns with the draft moraine plan. We have appended our full submission on both Bill 122 and the draft moraine plan, which we submitted to the Ministry of Municipal Affairs and Housing last week. We also provided the research offices of the opposition parties with a copy of this submission at the time we submitted it to the ministry.

FON believes that several amendments to the bill are necessary for it to afford the high level of protection that the Oak Ridges moraine deserves. Rather than go through all our concerns in Bill 122, I want to touch on just a few.

First, regarding establishment of the moraine area and plan and revocation of the plan, FON believes that section 2 of Bill 122 needs to be amended to state that the Lieutenant Governor in Council "shall," rather than "may," designate the Oak Ridges moraine area. This would require that cabinet identify and maintain the area rather than merely the cabinet giving the direction to do so.

In subsection 3(1), FON believes it important that it be cabinet, not the minister, that establishes the plan and that

cabinet “shall,” not “may,” establish the plan. This is a provincial-level plan that encompasses a wide spectrum of provincial interests. For that reason we believe it deserves cabinet’s seal of approval. We would draw your attention to the fact that under the Niagara Escarpment Planning and Development Act, it is cabinet, not the minister, that approved the Niagara Escarpment plan and it remains cabinet that approves a new Niagara Escarpment plan arising out of a five- and 10-year review.

The most troubling part of section 3 is subsection (3), providing that the minister may revoke the plan. It is troubling because it suggests at this early stage that consideration is being given to dissolving the Oak Ridges moraine conservation plan at a later date. It suggests to the public that the government may lack a long-term commitment to protection of the moraine. FON’s concern is not with the current Minister of Municipal Affairs and Housing, who is clearly committed to protecting the moraine, but rather with future ministers in future governments. This subsection is also unnecessary because it is already the prerogative of any government to repeal a statute and revoke any regulations passed pursuant to that statute.

Instead of simply removing subsection (3), FON recommends that it be replaced with the following wording: “The minister shall not revoke the plan.” We also recommend that clause 23(1)(c), allowing the minister to pass a regulation revoking the plan, should be struck out.

The second point that I want to make is on the size of the natural core and natural linkage areas. In his November 1 announcement, which we attended, Minister Hodgson indicated that at the 10-year review of the plan, the size of the natural core areas and the natural linkage areas could be reduced. However, subsection (5) of section 3 states otherwise. It states that the total area devoted to natural cores and the total area devoted to natural linkages could not be reduced. FON is concerned that there could be a reduction in the size of one natural core to permit development, with the equivalent areas made up elsewhere on the moraine through expansion of another natural core. We find this scenario unacceptable. Bill 122 should give proper effect to what we understand the minister to mean in his November 1 announcement: that the boundaries of each natural core area and each natural linkage area should not be reduced.

The third point I want to make is the minister’s powers to amend the plan. Bill 122 gives the minister rather sweeping powers to amend the Oak Ridges moraine conservation plan, with the option of doing it without very much public input. Subsections 12(8) through (10) give the minister sole decision-making power for plan amendments. FON recommends instead the provisions of the recently amended Niagara Escarpment Planning and Development Act. That act provides that if cabinet is of the opinion that the amendment “could have a significant impact on the purposes or objectives of the Niagara Escarpment plan,” then cabinet shall require the minister to submit the amendment to cabinet for a decision. Since the Oak Ridges moraine conservation plan is a provincial

plan similar in intent and scope to the Niagara Escarpment plan, it deserves the attention of cabinet, at least for amendments that could have a particularly significant environmental impact.

We are also concerned that subsection 12(5) gives insufficient public notice of proposed amendments to the plan. Consultation on amendments takes a by-invitation-only approach to seeking written submissions. Notice should instead be extended to the general public through newspaper advertisements. Also, an amendment to the moraine plan should be an instrument subject to the notice and comment provisions of the Environmental Bill of Rights.

My fourth and last point is the need for provincial oversight. Given the clear direction expressed in Bill 122 of the intent that municipalities, not the province, will carry out much of the implementation of the Oak Ridges moraine plan, we believe that there must be firm, provincial-level oversight of the compliance of municipal official plans and planning decisions on the moraine. We believe that Bill 122 should explicitly provide the minister with the authority to establish an advisory council to ensure proper implementation of this plan. It could be called the Oak Ridges moraine advisory council. While it can be argued that the minister can set up such an advisory council without enabling power provided by legislation, it would also give the public more confidence that a council was indeed going to be set up if it were explicitly provided for in this bill. The composition and duties of the council would, preferably, be spelled out in the bill, but failing that, could be prescribed by regulation. We envisage that the council would have representatives from the relevant provincial ministries as well as a number of non-government interests. One role for the council would be to oversee the province’s development of performance indicators for monitoring effectiveness of the plan and to evaluate plan compliance monitoring performed by municipalities.

In closing, I want to say that Bill 122 is generally the most positive development for the Oak Ridges moraine in over a decade and we do wish for its speedy passage.

Thank you, Mr Chair and members of the committee, for the opportunity to express our views on Bill 122.

**The Chair:** Thank you very much. You’ve left us about a minute and a half per caucus for questions.

**Ms Churley:** First of all, thank you for your presentation and all the good, hard work that you and many others been doing on this issue, which led to this legislation before us.

There are many flaws in the legislation, but unfortunately the bill has been time-allocated and so have these hearings and our clause-by-clause tomorrow. So I’m going to ask you a hard question: you made some recommendations for amendments. The New Democratic Party has put forward as many as we could in the limited time, so we haven’t covered everything that we’d like to but what we consider the more important ones. If you had to make a choice between some of these recommendations, is there something, in all the flaws you see, that

you think is absolutely critical and essential that we pass tomorrow—or do you feel all of the recommendations you gave tonight are equally important?

**Mr Faught:** No, I think they're given in order of priority, so the minister's ability to revoke the plan being the first point—

**Ms Churley:** So that's number one. OK.

**Mr Faught:** They're given in order of priority, so if we could only have one, we would take that one, and if we could have more than one, we'd work down.

**Ms Churley:** We'll certainly try to get the government to support those.

1900

**Ms Mushinski:** I have just one question on the minister's veto powers. What veto powers are in existence for the Niagara Escarpment plan?

**Ms Linda Pim:** Maybe you could clarify your question. Which section of the bill are you referring to?

**Ms Mushinski:** You've expressed some concern about the powers of the minister to overturn any part of this bill, and you've referred to the Niagara Escarpment plan as perhaps being the plan that would protect, obviously, the environmental interests of the escarpment. Would you prefer to see cabinet have the same powers for the Oak Ridges moraine plan, similar to the Niagara Escarpment? Is that what you're looking for?

**Ms Pim:** In terms of amendments to the Oak Ridges Moraine conservation plan, what we're proposing is that a similar regime be instituted as was instituted last year when the Niagara Escarpment Planning and Development Act was amended, which said that for particularly environmentally significant amendments it should be a cabinet decision. In some cases it would suffice to have the minister make decisions on amendments of lesser environmental significance.

**Mr Colle:** I think I've got about 800 questions but, in a minute, I guess the big difference between the Niagara Escarpment plan and this plan is that here you have unprecedented power in the hands of the minister to basically, by regulation, rip up the plan, revoke it, change it without any public consultation. Is that the biggest difference between the Niagara Escarpment plan and this plan?

**Mr Faught:** Yes, that's correct. Primarily, as Ms Mushinski said, we would like to see that as one of the corrections made to this bill, that the minister not be given those powers.

**Mr Colle:** The other thing is that you talked about the mapping and the natural linkage areas. One of the astonishing things I saw on the maps that were released a week after the announcement was made was that there was a natural linkage area in the Leslie Road area north of Stouffville Side Road up to Bethesda Road, over to the 404. That previously was always a natural linkage area, or certainly not a settlement area. Then the map that was issued that day showed it as a new settlement area that was basically coloured in grey.

I know FON did great work on the advisory committee. Was there any discussion when you were looking

at the maps in your deliberations with the ministry staff that the area I'm talking about—I guess it's about 600 acres-plus—was ever going to be designated as a settlement area in the mapping discussions? You know the area I'm talking about: Bethesda south of Stouffville, the other side of Bayview almost at Leslie to the 404, just on the other side to Markham.

**Mr Faught:** Our understanding from the ministry in our questions to them was that that was part of the negotiations for the Yonge east and Yonge west corridor discussions. So the re-colouring of the map, so to speak, on those lands was as a result of some of the negotiations that Mr Crombie held.

**Mr Colle:** So that was part of the land swap—

**Mr Faught:** I'm not sure if that exactly was part of the land trade, but it was part of the whole negotiations around putting a corridor area through the Yonge corridor.

**The Chair:** Thank you both for coming before us here this evening. We appreciate it.

**Ms Mushinski:** Mr Chair, could I just ask that when delegates are referring to maps, if they could refer to the specific map that's in our binders that would be helpful, please.

## SAVE THE OAK RIDGES MORaine COALITION

**The Chair:** Our next presentation will be the Save the Oak Ridges Moraine—STORM—Coalition.

Good evening and welcome to the committee.

**Ms Debbe Crandall:** Excuse me for being late, but I just came back from Vancouver and we all know the Lotus Land, Vancouver. I apologize for my lateness.

Good evening, Mr Chair and committee members. My name is Debbe Crandall. I am the executive director of STORM Coalition, which is the Save the Oak Ridges Moraine Coalition. I have with me Joseph O'Neill and Margaret Casey, both of whom are members of the STORM board.

STORM was founded in 1989 as a coalition of a handful of concerned citizen and ratepayer groups from across the moraine. Twelve years later our membership has grown to over 25 groups and many hundreds of individuals. Our founding mandate was to seek and promote provincial legislation for the long-term protection of the Oak Ridges moraine. So you can well imagine our feelings as we're sitting here today before this committee talking about Bill 122, the Oak Ridges Moraine Conservation Act and conservation plan.

Bill 122, in our estimation, is really the culmination of 12 years spanning three different governments. STORM was a member of the technical working committee from 1991 to 1994 and I myself chaired the Oak Ridges moraine citizens advisory committee. We were a member of this year's advisory panel which developed the framework for Bill 122 and the conservation plan. We have participated in a number of Ontario Municipal Board

hearings and continue to be active on some of the unresolved planning issues on the Oak Ridges moraine.

We are a non-partisan organization and as such we truly think that the Oak Ridges moraine transcends political parties and party politics. It is in this spirit that we are appearing before you tonight.

Bill 122 is a major step forward and we'd like to recognize all those who were involved in the steps up to this point and to both thank and congratulate the government for the resolution in moving forward from May 2001. Where we have been over the past decade is old planning and it's time that we embrace this provincial legislation and land use plan as being long overdue. However, as with most things, not everybody gets everything right; hence, that's why we're here today and that's why there have been meetings and debates etc. There is sure to be a commonality of points raised by environmental groups, and I'm hoping that most of the major issues will be addressed.

Our first two points have already been addressed by the Federation of Ontario Naturalists so I won't go into them very much. Obviously, section 3(3) is the revocation of the plan. We see absolutely no purpose for this, other than to give those of us involved many sleepless nights. So we would recommend that fact this clause be deleted, in the manner that has been recommended by FON.

The second is section 12, which are amendments to the plan; again, many sleepless nights for us who have been working with this issue for 12 years. The strength of the act and the plan is the certainty it gives to planning on the moraine. While the intent of the plan and the act seems to be to allow for only prescribed circumstances where the minister may want to amend the plan, the legislation does not reflect this. To truly provide the certainty that the public and municipalities have expressed so strongly over the past several months, we would recommend that section 12 of the act include the provisions that are written in the plan. These provisions are:

"The amendment would correct major or unforeseen circumstances, or would incorporate or reflect major new Ontario government legislation, regulations, policies or standards," or

"Deferral of the amendment to the next 10-year period would threaten the overall effectiveness or integrity of the plan."

We would ask that the legislation in fact limit the circumstances to which an amendment might take place on the plan itself.

As well, section 12(5) provides inadequate opportunities for public notice of a proposed amendment. Again, in the spirit of a new planning framework as we move forward, STORM would suggest that this be changed to allow for full public discourse and understanding of what is happening to this plan.

Section 15 on transition matters: I know this has always been a tricky point whenever you go from old to new planning. Section 15 deals with planning matters that are in various stages, from applications to those that

are pre-draft approved. Given that more than 30,000 draft-approved new units will be built, which is about 70,000 to 75,000 new people, we feel that this is more than enough to satisfy the real estate crunch as a buffer between old and new planning. We would recommend that section 15(2) be changed to state that all matters that have either commenced or for which no decision has been made should conform to the full provisions, the full strength of the conservation plan rather than those just prescribed within the plan. The provincial policy statement already deals with some of these provisions, some of which include ensuring there is an adequate supply of water and that there will be protection of significant natural features. So we don't feel that there has been enough movement forward, given the change that this planning framework brings forward. Basically, STORM would recommend that any project that does not have draft approval should conform to the full force of the conservation plan.

Under section 4, we feel that there are opportunities for Smart Growth objectives in the plan and act. Section 4 of the act describes the objectives of the Oak Ridges moraine conservation plan. While we recognize that this is a conservation plan, it is STORM's position that growth management and conservation go hand in hand.

We also recognize that unless we collectively begin to design and build our cities differently, we will not ever be able to stop the relentless sprawl of urbanization out of Toronto.

#### 1910

Objective 4(f) of the act, which states that "providing for continued development within existing urban settlement areas and recognizing existing rural settlements," does not address the need that we have to in fact design and use our land more efficiently. We feel that an important opportunity will be missed if the Oak Ridges moraine act and plan do not seek to address the issues of intensification, transit-supportive densities, affordable housing, redevelopment through downtown revitalization and brownfield conversions, all within an ecological planning framework.

We also are not unaware of the nuances of jurisdictional sidestepping in assuming responsibilities; however, the greater public interest requires that all levels of government begin to work more closely to deal with this significant issue.

Another point in section 8 is conflict and that municipalities may be more restrictive. While the act recognizes that municipalities may be more restrictive in all areas except for aggregate and agricultural policies—and I'd like to speak to that just a little bit later—a disturbing trend is being observed. Some of the ratepayers and environmental organizations that work with local municipalities are starting to hear that in fact municipalities are considering removing some of the restrictive policies within their official plans. This is in reaction to the many years of having to defend this at the Ontario Municipal Board, and they're afraid that the plan and the act do not strongly enough say that municipalities can be more

restrictive. As such, they're saying, "We don't want to deal with this at the board; we're not going to chance it. We're just going to remove it during that conformity exercise." I'm sure that it is not the intent of the act or the plan to in fact bring this forward. Therefore, STORM would recommend that subsection 8(2) be changed to read:

"Subject to clauses 5(c) and (d), an official plan amendment or zoning bylaw does not conflict with and has the same force and effect as the Oak Ridges moraine conservation plan to the extent that its provisions are more restrictive than those in the plan." We feel that this would give municipalities the assurances that more ecologically restrictive policies would have full support and would be recognized at the Ontario Municipal Board.

On the other two issues of agriculture and aggregates, there are provisions within the plan that municipalities cannot be more restrictive there. This speaks to a submission that we had made that some of the intensive agricultural practices should be more restricted within the plan. The plan does not limit any of these practices anywhere on the Oak Ridges moraine, and when we start talking about large feedlots which have areas that have become impervious to water, where they have large stockpiling of manure, we feel they are not appropriate for places like watershed protection areas, areas that are vulnerable to groundwater contamination. We think it's appropriate that municipalities can be more restrictive when it comes to agricultural practices.

Obviously, on the issue of aggregates, I think in today's world we are not going to see municipalities suddenly saying no to aggregates, but different municipalities, Caledon and Clarington, are attempting to come up with more innovative ways of dealing with their aggregates. This plan is going to squelch that and not allow that kind of creative positioning with the aggregate industry.

On those points—there are many more and I hope there's a full airing tonight—I thank you very much for this opportunity to be sitting here and talking.

**The Chair:** Again, we have about a minute and half per caucus. This time we'll start with the government benches.

**Mr Dunlop:** Thank you very much. We appreciate your comments here this evening. Something that I have asked before because I have a moraine in my backyard up in Simcoe North, and I'd just like to get your comments. The act that's before you, the Oak Ridges conservation act, do you feel that act, if expanded upon, can apply to the 400 other moraines across the province? Many people today are very interested in moraines and are watching this act very closely, and I'm just wondering how you feel about the expansion of it to other areas.

**Ms Crandall:** I think any land form that has so many different issues facing it deserves the kind of process that the Oak Ridges moraine itself has undergone. It is a really well-studied moraine and I think the first thing the act can spur is a very intensive detailed mapping exercise

so people understand where the water is. It seems that with moraines you've got water, aggregate, growth, development. So I think the process through the summer with the advisory panel should be replicated in those areas where conflict exists. Certainly, a lot of the innovation we've seen here is specific to the Oak Ridges moraine but can be translated upon a process that would benefit from that.

**Mr Colle:** Thanks again to STORM for all the leadership on this over the years, and certainly to the FON. It's amazing work that you've done. I want to put that on the record again and people should recognize that over and over again.

I have just a couple of questions. In looking at this act, one of the things that concerns me is that the eastern part of the moraine is basically at a much lower level of protection. In essence, estate lots are allowed there, local municipalities can overrule the plan there. What's STORM's position on protection levels for the eastern part of the moraine?

**Ms Crandall:** We feel that there should be a consistent approach taken to all lands on the Oak Ridges moraine. We do not support this inclusion of real estate development in the east. We feel that it is old planning, once again. There are opportunities within rural settlement areas where that kind of development can be encouraged. That was the position we made in our submission.

We think there should be—echoing what FON said—an oversight agency that is a step between municipalities and that monitors what's going on. So it is disturbing when we start talking about upper-tier municipalities that have approvals authority.

**Mr Colle:** In the eastern end that they don't have in the rest of the moraine.

**Ms Crandall:** It's my understanding that they have an option that would make them kind of deke out of some of the provisions of the Planning Act. Whether or not they would be exercising that ability that the act gives them, we feel that it should be a stronger provincial control over planning on the Oak Ridges moraine.

**Ms Churley:** Thank you very much. I'm glad you made it here tonight. I think we are going to be hearing some themes from probably the various sides tonight, and hopefully we can get some of those amendments through tomorrow. I don't know if you were here earlier when the Greater Toronto Home Builders' Association spoke.

**Ms Crandall:** I wish I had been.

**Ms Churley:** I think they're still here in the room. They expressed some concerns that I don't have time to go over right now, but they did talk about the fact that you can't be in favour of sprawl and—what was the other development?

**Ms Mushinski:** Intensification.

**Ms Churley:** Thank you—intensification at the same time, because people have to live somewhere and they're responding to demand. I asked the question which you brought up in your presentation, and that is needing to have a more holistic view to—you mentioned them—

intensification, transit-supportive densities, affordable housing, redevelopment—all of those things. I don't think you're going to get that in this plan; we can try. Are you suggesting that we try to bring forward a new green Planning Act, similar to the one that New Democrats brought in under John Sewell? He was here earlier; I don't know if he's still in the room. That seems to me what we're going to need to do because we hear there are moraines all over the place which are probably going to end up in the same position.

**Ms Crandall:** I hope that in the provincial policy statement review this is addressed, but it seems to me that this is an incredible opportunity when we have a new planning framework. We've taken a step toward this smart growth by putting urban growth boundaries around our settlement areas. So there is an advancement of planning happening with this act.

I just seems to me an incredible opportunity for the province and its municipal partners to kind of stop this sidestepping, because by demanding something you then have to assume some responsibility. I guess we're asking that the provincial government and the municipal governments start to assume some of the responsibility that's going to be necessary in getting the dollars necessary for the transit-supportive. It's time that we stopped talking about it. If we truly don't want those urban boundaries to expand in 10 years, then we have to do something about it now. Now is the time to do it. There are places on the moraine where the settlement guidelines are still not written and this can be implemented if the municipalities are directed to do so.

**The Chair:** Thank you very much for making the effort to come before us here tonight. We appreciate it.

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#### AGGREGATE PRODUCERS' ASSOCIATION OF ONTARIO

**The Chair:** Our next presentation will be from the Aggregate Producers' Association of Ontario. Good evening and welcome to the committee.

**Ms Carol Hochu:** Good evening, Mr Chairman, and committee members. My name is Carol Hochu. I am president of the Aggregate Producers' Association of Ontario, APAO for short. Joining me this evening are Jackie Fraser, our environment and resources manager at the APAO, and one of our members, James Parkin of MHBC Planning in Kitchener.

I hope that the clerk has distributed two handouts for you: a spiral-bound position paper and a packet that includes my remarks, although I must warn you that I have edited them heavily since they've been put into the kit.

In our brief time together, I'd like to say a few words about our association and our industry and then give you our comments on the bill and the plan.

First, about the APAO, we were formed in 1956 and we currently represent 100 companies that are producers of sand, gravel and crushed stone. Collectively, our

member companies supply the majority of the 155 million metric tonnes of aggregate that's consumed in the province annually. On a per capita basis, this is 14 metric tonnes per person or about half a truckload of gravel or stone per person.

Our mission is to promote the wise management of aggregate resources in a manner that conserves the environment while maintaining a healthy and competitive industry.

Ontario's economy really cannot grow and prosper without aggregates. We are fundamental to the province's infrastructure. Whether it's roads, bridges, schools, homes or shopping malls, structures are dependent on a sub-base and a base of aggregates. Aggregate products of course are used in a variety of manufacturing processes. Every day, Ontarians use and benefit from non-renewable aggregate products and the industry is continually challenged to find new sources and deposits to meet demand.

The greater Toronto area is a major market for aggregate products and the Oak Ridges moraine is a predominant source of those close-to-market aggregates for the GTA, accounting for 60% of its sand and gravel production. There is no realistic close-to-market alternative.

Why is it important to have a close-to-market supply of aggregate? Having a close-to-market supply is not only good planning but it's good for the environment and it's good for the economy. If sources of aggregate from the moraine were not available, extraction would be forced to alternative supply areas much farther afield, such as the Oro moraine or the Carden plain. If you look on the back of our green position paper, we do have a nice map of the GTA. You can see the Oak Ridges moraine as well as the next closest areas for extraction.

Increasing the haul distance for total GTA aggregate production does indeed have an environmental impact. A 30-kilometre addition to the hauling distance would mean 56 million additional kilometres of truck travel per year. This would result in an additional 63,000 metric tonnes of extra greenhouse gases per year and 36 million extra litres of fossil fuel consumption annually, not to mention the social impact of increased truck traffic.

On the economic front, over half of the cost of delivered aggregate is attributed to trucking. Because the majority of aggregates are purchased by public authorities, increased transportation cost would be a direct cost to the taxpayer.

Planning on the moraine must recognize the range in environmental features and take a balanced approach which realizes the public interest in ensuring continued availability of aggregate from the moraine.

Our position paper explains in detail why aggregate extraction is indeed different from other forms of development. First of all, it has to take place where the deposits occur, it is an interim land use and it doesn't compromise the hydrogeological functions. Legislation and policy for the moraine must recognize these distinguishing factors.

We're certainly pleased that the act and the associated plan generally recognize the importance of the moraine's aggregate resources. We support the inclusion of resource uses in the objectives of the act, section 4, and the plan.

We agree that close-to-market sand and gravel resources are one of the moraine's unique features, making it vital to south central Ontario. It is important that new and existing aggregate extraction is permitted in the countryside areas and the natural linkage areas.

A remaining major concern is the prohibition of new extraction in the very broadly defined natural core areas. While the natural core areas are described in the plan as concentrations of significant features which are critical to maintaining the moraine, in fact they include both significant features as well as less significant areas. Portions of the natural core areas, such as open fields and planted or early successional forests, may be good locations for new aggregate extraction, especially if located on a haul route or adjacent to an existing aggregate operation. But of course specific environmental tests, including a value-added rehabilitation plan, would have to be met.

With respect to the plan, the association has provided detailed comments to the Ministry of Municipal Affairs and Housing. A copy of our comments is included in the presentation kit, so I won't go over those in any detail.

With respect to the linkage areas, the extensive core area prohibition for new extraction means that it is critical that the act and the plan provide opportunities for extraction in the natural linkage areas as well as the countryside areas. That is the current proposal and we do support it.

We do have concerns regarding the additional restrictions that are suggested for the linkage areas. I think it's important to be clear as to what these natural linkage areas are. Much of the area is open pasture or agricultural land. Major roads and a variety of land uses dissect it. Much of the area is not presently functioning as any form of corridor. It does have that potential, but that is a long-term vision, and some quite significant land use changes are required to achieve that goal.

We do not agree with the arbitrary minimum-width requirements proposed in the plan. We understand the importance of connectivity between natural areas but the width requirements and the effect of an interim land use have to be examined on a site-by-site basis to determine if any corridor function is affected.

The natural linkage areas provide many acceptable locations for new aggregate extraction. Rehabilitation design may be just the thing that is needed to change from an agricultural use to something with a higher ecological value.

We also don't agree with the limitation on extraction below water in natural linkage areas. The hydrogeological function of the moraine is protected and not threatened by properly designed aggregate extraction.

With respect to approval authority to amend the plan, section 12 of the act allows the minister to propose an amendment to the plan and controls the amendment

process. The same minister also retains final decision-making authority on amendments to the plan.

While we certainly think that Minister Hodgson is a fine and capable minister, we believe there is merit in assigning approval authority for significant amendments to provincial cabinet in order to ensure that the full scope of provincial issues is taken into account. At the same time, there should be a simple mechanism to make corrections to the mapping that will be required as they are used in day-to-day planning.

On the issue of the 10-year review, monitoring results and reviewing the effectiveness of a policy are a basic and fundamental part of the planning process. Having a review doesn't necessarily mean that there will be major rewrites or changes in direction. It does mean that there is a system in place to monitor effectiveness and make corrections where it can be demonstrated that the public policy has not been effective in achieving the public interest.

APAO supports the sections in the act that require its review. In the case of some of the aggregate issues, not surprisingly, we think that the 10-year review period is too far away. The association encourages that a good monitoring system be put in place in order to provide a factual and scientific basis for reviews.

We are satisfied with the section in the plan which sets out study requirements pertaining to the review of aggregate policies.

We are promoting a small but important change to the objectives of the act. Section 4, clause (d) establishes that one objective of the plan is to ensure that the moraine "is maintained as a continuous natural landform." We suggest this wording be changed to "substantially continuous natural landform" in recognition of the diversity of existing and intended features and uses.

On the issue of limitations on official plans being more restrictive, we support the provisions in the act and the plan which ensure that municipal official plans and zoning bylaws cannot be more restrictive than the provincial plan with respect to aggregate extraction. It is a long-established principle in the province that the management of aggregate resources transcends municipal boundaries. The provincial interest in continued availability of aggregates should not be unreasonably restricted at the local government level.

In closing, well-planned aggregate extraction is an interim land use that does not compromise the natural heritage values associated with the moraine; ensuring availability of aggregate from this close-to-market source is environmentally sound public policy; rehabilitation of pits provides opportunities to enhance the natural heritage and recreational attributes of the moraine and create after-uses that maximize biodiversity and increase ecological values.

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There are many wonderful examples of rehabilitation along the Oak Ridges moraine, and their very success is one of the reasons these rehabilitated pits are often overlooked. The rehabilitation has been so successful that

many do not know that some of these sites were once pits. Please refer to our position paper and other kit materials for some of these fine examples.

Finally, we appreciate the opportunity to be involved in the moraine debate, and we would like to recognize and thank Denis Schmiegelow, president of Highland Creek Sand and Gravel, for representing the aggregate industry on the advisory panel.

Thank you for your time and attention. We'd be pleased to answer any questions you might have.

**The Chair:** Thank you very much. Again, we've got about four and a half minutes, so a minute and a half per caucus. This time we'll start with Mr Colle.

**Mr Colle:** Thank you so much for your very comprehensive presentation. My question is, what does this act prohibit you from doing that you're doing now?

**Mr James Parkin:** The biggest difference would be the broad mapping of the core areas, where there are areas within those natural core areas that are, we believe, perfectly acceptable locations for aggregate extraction. There's open fields and young plantations within those cores that today could be considered subject to a wide range of municipal and provincial policies and environmental tests but could be considered for aggregate extraction.

**Mr Colle:** But this act isn't restricting what you're doing right now and what you've been doing for the last 50 years up there, is it?

**Mr Parkin:** The restrictions that I mentioned are in the plan, and they are more restrictive than has been the case.

**Mr Colle:** Then the other question I have is, if you're extracting aggregates all across this huge moraine, from Peterborough up to Caledon, why do you have to still have the ability to extract aggregates from the natural linkage and core areas? Why are you in favour of also extracting in that small strip of natural core? Why can't you just, in the other 90% of the moraine, do your extraction? Why do you have to also be in the natural core and linkage areas?

**Mr Parkin:** The mapping that we've provided gives you a general indication of where you're most likely to find good aggregate deposits. When you start applying other constraints, both environmental and social, and take a closer look at the geology of the area, it becomes very difficult to find good areas for aggregate extraction. So it's a case of unnecessarily limiting the choices, which is going to reduce options, reduce competition, and gradually would force supply further afield.

I think we should be clear that there are areas, certainly large portions of the core areas, that are legitimate natural areas that are protected now and would continue to be protected under the plan. So we're not suggesting that the whole portion of the core area should be—

**Mr Colle:** But you want to maintain that right to go in there and extract even in the natural core areas?

**Mr Parkin:** In the portions of it that are not—

**Mr Colle:** Despite what the plan says, you still want to have that right to go in there?

**Mr Parkin:** The plan would still protect the portions of it that are the significant natural heritage features. So the portions of it that are significant woodlands, that are a large blocks of mature forest areas, are protected. We're not seeking any sort of unreasonable right to go in and destroy legitimate environmental features. What we're saying is that the way they have been mapped, they have included in the areas farm fields on the edges, in between these areas, where I believe aggregate extraction can occur without compromising the overall environmental objective.

**Ms Churley:** Those were essentially my questions as well, so thank you very much for your presentation.

**The Chair:** Any questions from the government?

**Mr Norm Miller:** Yes. First of all, I'd like to thank this group for participating on the advisory panel on the Oak Ridges moraine. Thank you very much for that and for coming here today.

Just a question to do with the one statement, "The hydrogeological function of the moraine is protected and not threatened by properly designed aggregate extraction." I don't have a great understanding of how it works, but I kind of figured that the gravel in pits was sort of a filter for the water. How, when you take the gravel away, does it not have a negative environmental effect?

**Ms Jackie Fraser:** We get this question quite a bit. I remember at one of the public meetings it was described as—it was kind of a graphic description—scooping out the liver, scooping out the actual filtering capacity of the moraine. But you have to think of the scale of the moraine, the size of the moraine, compared to the depth of the pit. You're really scratching the surface. There are many, many layers within the moraine, and pits typically are just using the superficial layer.

**Mr Norm Miller:** How deep does a pit normally go?

*Interjection.*

**Mr Chudleigh:** You're talking about not going below the water level? That's acceptable for your purposes?

**Ms Fraser:** No, we mentioned that that's a restriction within the linkage areas that we're not happy with, given that, properly planned, there are no hydrogeological impacts.

**Mr Chudleigh:** But that is in the plan currently, that you wouldn't be allowed to go below the water level.

**Ms Fraser:** Within the linkage areas.

**Mr Chudleigh:** Within the linkage areas.

**The Chair:** Thank you for appearing before the committee this evening.

Our next presentation will be from the Canadian Environmental Defence Fund, if they are in attendance. Is there anyone from the Canadian Environmental Defence Fund in attendance? Not yet? All right. And I haven't seen Councillor Miller.

## JANE UNDERHILL

**The Chair:** We'll move on to Ms Underhill. Jane Underhill will be our next presenter. Good evening and welcome to the committee. Just a reminder that we have 10 minutes for your presentation for you to divide as you see fit.

**Ms Jane Underhill:** Good evening, Chair and members of committee. My name is Jane Underhill and I am here this evening as a long-time resident, 42 years, of King City, a rural community in the rural township of King. I have been fighting, along with many others, since the early 1990s to see good planning prevail for the sake of the village and the township and to keep King green. I have with me tonight two representatives from residents' groups in the township: Nancy Hopkinson from Nobleton Alert and Nina Graham from King City Preserve the Village.

King City Preserve the Village, a residents' group, was formed, with myself as president, in January 1994 when the planning process for our village, as it appeared to us, was derailed. In 1997, I felt compelled to run for public office and was elected as councillor for ward 1, King City, on a platform to stop the pipe and the unjustified scale of growth in the new King City pipe-driven community plan, OPA 54.

King City, with huge environmental constraints—you will see the attached map—was formerly known as Springhill, and aptly so. For your information, King City lies entirely within the Oak Ridges moraine, in a core recharge area and the headwaters of the East Humber River. Most of King township, 70%, also lies within the Oak Ridges moraine and encompasses an area of approximately 130 square miles, or 19% of York region's total area.

I would like to take this opportunity to publicly thank the government of Ontario for having the courage and determination to take positive action, through planning and legislation, to ensure "that the Oak Ridges moraine area is maintained as a continuous natural landform and environment for the benefit of present and future generations."

I personally have responded to the document *Share Your Vision for the Oak Ridges Moraine* and also to the Oak Ridges moraine conservation plan and legislation. Both my submissions were accompanied by extensive documentation to support my comments, suggestions and concerns.

Of particular and continuing concern is the designation of King City as a settlement area on the Oak Ridges moraine area land use designation map, as King City, a community of some 5,000 persons, is partially serviced with municipal water only from the deep aquifer of the Oak Ridges moraine.

The Oak Ridges moraine conservation plan and legislation provides "for continued development within existing urban settlement areas and recognizing rural settlements." I continue to maintain that King City is a

rural settlement area, and I will outline my reasons for determining so.

The York region official plan, approved in 1994, map 5, shows the urban areas of the region—Newmarket, Aurora, Richmond Hill, Vaughan and Markham—as an inverted T, serviced by the York-Durham sewer system, the "big pipe." The communities of Schomberg, Nobleton and King City in King township are all identified as towns or villages with schematic boundaries as recently as 1999. This is in the York region official plan. Similarly, map 6 in the York region official plan shows that the township is entirely designated as either agricultural policy area or rural policy area. This also applies to the undeveloped lands within the King City study area.

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Designating King City as an urban settlement area is contrary to the findings of the Ontario Municipal Board. The hearing decision of March 6, 2000, upheld by Divisional Court, clearly establishes King City as a rural settlement area. To illustrate, and there are many more such illustrations in the decision, page 22 of the decision states, "My finding that OPA #54 represents an expansion within a rural settlement area brings OPA #54 under the evaluation criteria of section 4.1.1" of the Oak Ridges moraine implementation guidelines. On the Divisional Court hearing, the court declined to interfere with the OMB's decision on the boundaries of the King City rural settlement area. The issue outstanding with the court is not whether King City is a rural settlement area, but rather where the boundaries of the rural settlement area lie.

The correct designation of King City as a rural settlement, and not a settlement area, is very important, because a rural settlement is a component of a countryside area. It has very different objectives and consequences under the Oak Ridges moraine plan from a settlement area, as it does in the Oak Ridges moraine implementation guidelines.

I think it is also important to draw to the committee's attention important decisions made recently by King township council.

On November 26, 2001, council approved a resolution requesting the Minister of the Environment to bump up the class EA and project for King City to an individual EA. On December 3, council approved the recommendation that "large wastewater infrastructure such as the YDSS and the Bolton/Brampton trunk sewer should not be allowed to extend further on the Oak Ridges moraine and that local treatment plants for settlement areas be considered." Finally, in committee just this past Monday, King City was declared to be a rural settlement area and the ministry was to be notified.

I am therefore respectfully requesting that the already built portions of King City—that is, the existing community—be properly designated as a rural settlement in the final version of the Oak Ridges moraine map, and that the remaining portions in the study area, with the possible exception of those areas that have draft plan approval, be designated as either countryside area,

natural core area or natural linkage area, as may be appropriate.

Thank you for your consideration of my request.

**The Chair:** Thank you very much, Ms Underhill. As is the practice of the committee, we've got about three minutes left, so we'll give all the time to the next party in rotation. Ms Churley.

**Ms Churley:** Thank you very much. It's nice to see you again. Congratulations to you.

I wanted to get some clarification from you on your request here tonight. You say that King City was declared to be a rural settlement area and you notified the ministry. So vis-à-vis the legislation we're talking about tonight, you mention that in the final version of the ORM map this therefore be included. I'm assuming that you and your council are still in the process of consulting with the ministry and whoever else is involved in this process. Do you still have an opportunity to do that outside of this legislation, or are you telling me that once this is passed, it's too late?

**Ms Underhill:** Once it is passed, it's too late. The comments were sent down to the ministry, I presume, on Monday. Hopefully, they will be considered.

**Ms Churley:** Have you heard anything back from the ministry at all?

**Ms Underhill:** No, because the comments just went in.

**Ms Churley:** OK. Because I presume you're aware that this bill has been very quickly what we call time-allocated. We're having these three hours of public hearings tonight. The opposition parties both objected to that; they wanted more time to work this out. Tomorrow morning, we do a time-allocated clause-by-clause. At 12:30, it has to end and we have to vote, and what isn't voted on is deemed to have been voted on. So I'm just concerned that, as something that you've been fighting for—

**Ms Underhill:** For years.

**Ms Churley:** —for years and years, if this goes ahead without this piece, what are the implications for your communities?

**Ms Underhill:** I certainly did bring it to the attention of the Oak Ridges moraine committee in September, to the attention of the ministry and the committee, I presume, when I responded to the Share Your Vision document and Smart Growth that I was deeply concerned about King City being designated on the map. The designation will create a new urban area on the Oak Ridges moraine and I don't think anybody wants to see that.

**Ms Churley:** In that particular area you're talking about, are there already a lot of development plans in the hopper?

**Ms Underhill:** Yes, there are. There are a lot of lands bought up outside of the King City area too.

**Ms Churley:** What do you think the implications of that will be? I presume you're concerned about the water supply. I'd like to have better information and understanding of your biggest concern, if we don't change this.

**Ms Underhill:** The biggest concern of course is the water supply, but we're also concerned about urban sprawl, because the York-Durham sewage system and any big regional system precipitates urban sprawl. Everywhere the YDSS has gone, the aquifer has been depleted, and then of course water is piped in from Lake Ontario.

**The Chair:** Thank you very much for coming before us here this evening. We appreciate it.

## REGIONAL MUNICIPALITY OF YORK

**The Chair:** I will ask again if there is anyone here from the Canadian Environmental Defence Fund, or is Councillor Miller in attendance? Neither being here yet, we'll move to the Regional Municipality of York. Good evening and welcome to the committee.

**Mr Alan Wells:** My name is Alan Wells. I'm chief administrative officer for the region of York. Don Sinclair is one of our solicitors and Bryan Tuckey is our commissioner of planning. Bryan will join me in the presentation.

York region is one of Canada's fastest-growing municipalities. If you're not familiar with where we are, we're directly north of Metropolitan Toronto, the rest of York county. We're here because about 30% of the land area of York region is part of the Oak Ridges moraine, so it's a significant part of our landscape and community.

Just over the last two years, York region has grown by over 40,000 people per year, so growth management is a very important issue in York region. It's important for us to have a growth management strategy that takes into account the three pillars of our official plan, which are developing a healthy community, a community that has good economic vitality, and a community that sustains the natural environment and resources of York region, and that's dead on with the subject we have before us tonight.

In December 1998 regional council directed staff of the region of York to contact staff of the regions of Durham and Peel and review official plan policies to better protect the Oak Ridges moraine, because collectively the three regions have a great stake in the moraine.

This year the three regions, along with other moraine municipalities and the Conservation Authorities Moraine Coalition, released a report entitled the Oak Ridges Moraine—Proposals for the Protection and Management of a Unique Landscape. We've filed copies of that report with you tonight, along with several other reports.

In this report, the partners called on the province to assist in protecting the moraine in four main areas: groundwater data management, natural heritage data management, policy and land securement. The region is pleased to see the province has taken decisive action in supporting the tri-region initiatives through a strong policy framework for the moraine as a whole.

On November 28, 2001, York region's planning and development services committee endorsed a report dealing with the draft moraine conservation act and conservation plan. York regional council will deal with

that report tomorrow morning, but it has been endorsed by our planning committee and is consistent with our policy development framework. A copy of that report is filed with you as well.

The planning and development services staff report on the act and plan and copies of both the tri-region strategy document, Oak Ridges Moraine—Proposals for the Protection and Management of a Unique Landscape, and its recommendations are herewith submitted to you.

I would now like to call on Bryan Tuckey, our commissioner of planning, who will highlight the region's key points with regard to the act and the conservation plan.

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**Mr Bryan Tuckey:** To begin, I think it's important to state that regional staff have had the opportunity to meet with representatives of the provincial ministries on several occasions over the past number of weeks. We've discussed the act and the plan. Their interpretation of both have been provided to provincial staff in a detailed list of recommended changes. These meetings have been beneficial to all concerned and have provided informal feedback to provincial staff. However, there are important points we believe merit committee consideration at this time.

I'll start with the legislation. The region recognizes the significant body of work accomplished by the province during a very short space of time. However, there appear to be some contradictions in the legislation that may merit some consideration.

First, dealing with transition provisions: the moraine conservation act contains provisions to deal with applications that are already in the planning process, as well as applications and planning documents already approved. There is potential for some confusion within the transition provisions of the act. Section 9 of the moraine act requires amendments to regional and local official plans to implement the conservation plan, whereas section 15(3) of the transition provisions then exempt matters from complying with the act if the decision was made before November 17, 2001.

One interpretation we've heard of section 15(3) is that any municipal official plan that has been approved before November 17 need not conform with the conservation plan, as the decision has been made. This obviously is not the intent of the legislation, given the requirement in section 9. In order to clear up this issue, we suggest the act be clarified by the addition of the words "subject to section 9" at the beginning of section 15(3).

Second, section 15(4) refers to the deemed commencement of an official plan as being the day the plan is adopted. There is no parallel wording in section 15(5), providing a deemed decision for municipal plans, notwithstanding that other matters listed in section 15(4), such as request for an official plan amendment, development in a site plan control area or minor variance, are provided with the deemed decisions in section 15(5). For clarity, we recommend that such omissions in section 15(5) be included in this bill.

Third is in regard to the indemnification clauses of the act. Section 20 of the act protects decision-makers from liability for making decisions pursuant to this act. Section 20(7) of the act states that the definition of "person" includes, but is not limited to, the crown, a member of the executive council, an employee of the crown, an agent of the crown and a municipality." This section lists provincial persons but omits their municipal counterparts: councillors, employees and agents of the municipality.

For clarity, we recommend that the definition of "person" be modified to include municipal counterparts to the provincial persons included in this section.

The reports before you outline some of the issues with the plan, and I'd like to highlight a few with the committee while I have the opportunity.

The first deals with clarity and readability. For a planning document to be workable, it must be clear and readable. Every effort must therefore be made to improve the plan's readability and produce mapping that clearly identifies the appropriate land use designations and their extent. Just to give you an example, specific policies relating to settlement areas appear in section 4.14 of the plan. However, these policies cross-reference the reader to additional sections, and I'll just list them: sections 2, 3.5, 4.2, 4.3, 4.12, 4.13, 4.11(a) and 4.11(e). For administrative purposes, we would suggest this type of cross-referencing may benefit from some simplification.

The second relates to time frames. The time frames prescribed by the act in the plan for regional official plan amendments, watershed studies, water balance and water conservation strategies are aggressive. The region will make every effort to meet these deadlines. However, the province must recognize that there is considerable work to be undertaken. Some of this work has been started, particularly as it relates to the Yonge Street aquifer. Additional work will be commenced in the near future. Other work must wait until provincial ministries supply additional information, including terms of reference or mapping.

It's important that the region clearly state now that we're making all best efforts to meet the time frames of the plan and the legislation, but should there be some unforeseen circumstances or late receipt of information from the province, the region should not be seen as not meeting the spirit and the intent of the legislation. We're very committed to the legislation and implementing it.

Third is definitions. Regional staff have also identified several difficulties with definitions, two of which I'd like to highlight tonight. The first is "large-scale development," defined as "development consisting of four or more lots, or a building or buildings which has a floor area of 500 square metres or more," and that's in and around 5,400 square feet.

This definition will capture virtually all development, even in settlement areas, and trigger the need to assess these applications against detailed sections of the plan relating to watershed plans, water balance and water conservation plans. While we agree that the impacts must

be assessed, to add additional standards in settlement areas may act to frustrate the goal of intensification in these areas. Such actions go against the principles of Smart Growth in the wider regional context.

We suggest that either the definition of “large-scale development” be raised or that in settlement areas where intensified development should be encouraged, the standards be waived.

The second definition relates to “necessary,” when used in reference to transportation, infrastructure and utilities. This is also an issue for the region of York and other public roads authorities. The definition as it is proposed fails to reference the Environmental Assessment Act and its provisions. Regional staff suggest the following wording for the definition of “necessary”: “The need for the project has been assessed through the Environmental Assessment Act and an approval under the act has been issued.” Without this reference, municipal undertakings may be faced with two sets of tests under two acts for the same project. This is not an appropriate use of public resources.

Fourth, the ability of municipal plans to be more restrictive than the Oak Ridges moraine conservation plan: throughout the preparation of the tri-region Oak Ridges moraine strategy, a central objective was that the Oak Ridges moraine plan should not undermine more restrictive municipal planning requirements designed to protect the ecological integrity of the moraine. Generally, the Oak Ridges moraine plan has achieved this objective, except in the areas of aggregates and agriculture. We suggest that these two uses, while appropriate on the moraine, should also be subject to the application of more restrictive planning policies if properly justified and supported by their regional or local municipalities.

Fifth is freely accessible data. The tri-region Oak Ridges moraine initiative also identified the importance of freely accessible data management systems for both groundwater and natural heritage information. While the moraine conservation plan references data management systems, the responsibility to develop and maintain these systems appears to be retained by the province in partnership with other stakeholders. The region suggests that a more collaborative, accessible model and system is necessary to properly protect the moraine.

In conclusion, the Oak Ridges Moraine Conservation Act and plan is an important initiative, but is only one step in providing a sustainable and economically viable GTA. The council of the region of York is committed to supporting other provincial and regional initiatives, including regional transit; the provision of rental and affordable housing; an urban structure of nodes and corridors that will revitalize the existing urban structure; and providing for the protection of sensitive, natural landscapes throughout York region. We look forward to working with the province on all these initiatives.

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**The Vice-Chair (Mr Norm Miller):** That allows us a couple of minutes, so I'll pass it on to the government side for a question.

**Ms Churley:** Per caucus?

**The Vice-Chair:** No, just in total.

**Mr Chudleigh:** Thank you for your presentation. It's good to see you tonight. I take it by your concerns about the official plan of the area, as opposed to the act, that you're proposing the same kind of approach we had at the Niagara Escarpment Commission, which was that you would initiate the act first and bring in the plan on a lag basis. Is that what I heard you say?

**Mr Tuckey:** Yes, I think the plan may merit a few more months of consultation to ensure that it is clear, readable and accessible, not just to us but to the public that will be using it over the next number of years.

**Mr Chudleigh:** Is that going to create further opportunities to refine the plan, perhaps? Do you see that kind of thing happening within the plan?

**Mr Tuckey:** Yes. As I said during the presentation, we support the principles of the plan, and there may be that opportunity just to make it a little better and meet more of the needs of all the people involved.

**Mr Chudleigh:** In the way the plan is proposed right now, how likely do you think it is that one of the councillors in York might end up in jail?

*Interjections.*

**Mr Chudleigh:** But you would like to see that cleaned up in the plan?

**Mr Wells:** We'd like to see that happen, yes.

**Mr Chudleigh:** But the likelihood is not very great as it sits now?

**Mr Wells:** The likelihood is not very great, but we're asked to be partners in this and we'd ask for the same protection as you afford yourself, with all due respect.

**Mr Chudleigh:** It's intended to keep your attention.

**The Chair:** Thank you for coming before us here this evening.

**Mr Colle:** Mr Chair, I want to put on the record that I wanted to ask them while they're still bulldozing Bayview.

**Mr Wells:** I would be delighted to answer that question.

**Mr Colle:** I would like to ask you that, but I can't.

**Mr Wells:** I can leave you our press release, which explains that in some detail and ask that it be circulated, because there is a lot of misinformation about that that should be cleared.

**The Chair:** If you have something you'd like to leave with the clerk, I'm sure it would be well circulated.

DAVID MILLER

**The Chair:** We are joined now by Councillor Miller, so we'll move back in our sequence to that spot. Good evening, councillor. Welcome to the committee. We have 10 minutes for your presentation.

**Mr David Miller:** I apologize for being unable to be here precisely at 7:40. We had a rather contentious issue before council tonight—no change from previous days.

I want to thank members of the committee for the opportunity to speak on behalf of the city of Toronto.

You'll have a letter before you that is the official position of the city. I'm here to highlight some issues. My speaking notes are not from the letter, although the content will be similar, but hopefully be more succinct. I'm joined today by Grace Patterson, who is the solicitor in legal services who has been working on this issue, and Bill Snodgrass, who is senior engineer, water services, who interestingly was an expert witness at the Richmond Hill hearing on behalf of the province of Ontario. So we are quite lucky in the staff we hire at the city of Toronto.

I first of all want to thank the Chair, Mr Colle and Marilyn Churley for the work they've done on this issue in the past. The city believes that the Oak Ridges Moraine Conservation Act, 2001, is an important step forward, but we believe there are a number of outstanding concerns with the legislation, and I'm really here today to ask that the legislation be amended and for the plan to address 10 points, which I will address in a moment.

I should say that Toronto city council has had an ongoing commitment, an interest in protecting the long-term health of the Oak Ridges moraine. For a number of years, we have been developing a wet weather flow management master plan, which is easier to do than to say. It will identify storm water management strategies on a watershed basis for six watersheds and the Lake Ontario waterfront. We're doing that in part because of a direction from the province of Ontario in 1994 and 1995.

The city has also recognized that protecting the moraine means that growth needs to be directed away from it, including into the city of Toronto. The city recognizes that there should be a regional growth management strategy for the GTA region and is prepared to participate in developing such a strategy. The city is undertaking a study entitled City and Regional Strategies for Growth that Protect Countryside and Air Quality to examine development patterns and hopefully thereby protect valuable countryside such as the moraine and reduce greenhouse gas emissions and air pollution by ensuring a better pattern of development.

The 10 points that I'd like to address today are as follows:

The first is to create a commission or oversight agency for administering and protecting the ORM plan. We believe that having an arm's-length commission with resources and expertise would provide a transparent, accountable body to oversee implementation of the plan. One example could be extending the mandate of the Niagara Escarpment Commission, at least in a short-term way, to do this in a cost-effective way to ensure there was appropriate oversight.

The second very important issue is to limit the excessive powers of the minister. City council has noted on a number of occasions this is a serious weakness in the act. We would request subsection 3(1) be amended so that the minister must establish a plan for the entire moraine. We request that subsections 3(3) and clause 23(1)(c) of the legislation be deleted. They allow the minister to revoke the plan by regulation. We think that's

inappropriate, and given the effort that's been put forward in crafting this legislation, undermines the sense of trust in the legislation. If revocation is sought, it should be done as a legislative process.

We would request that subsection 14(2) be deleted so that the minister's orders under section 47 of the Planning Act conform to the Oak Ridges moraine conservation plan or the relevant official plan. We would request that clause 23(1)(b) of the legislation and that the clause 4(i) objective be deleted so that new objectives to the plan may not be made by the minister acting alone.

The third point is to request that new objectives be added that are consistent with preservation; for example, to add an objective to encourage the creation of public parks, which is consistent with the proposal of 12% publicly owned land in the Share Your Vision document. An objective should be added to protect built and cultural heritage, which is lacking at the moment.

The fourth is that no new mineral aggregate operations and wayside pits or no new expansion of these operations in natural core areas should be considered under the 10-year review. It's the city's view that municipal official plan policies should be allowed to be more restrictive than those of the ORM plan for agricultural and mineral aggregate operations, which I think is consistent with one of the points made by the region of York.

The second is that the minimum width of 1.25 kilometres of natural linkage area proposed to remain outside mineral aggregate operations should be subject to review, and any expansion of operations should minimize edge effects to existing natural features.

The fifth point is the city would view that the legislation should prohibit the construction of new roads in natural core areas.

The sixth point is that we should ensure that any review or amendment receive full public scrutiny. This goes back to the power of the minister to do a lot by regulation. Regulation is a very private process, and it's important, given the huge public interest in this issue, that things be done in a public way.

The seventh is that the province ensure that applications in the transition conform to the plan. Our suggestion is that section 5.2 of the plan be amended such that development applications commenced before November 17, 2001, but not decided upon, so there's no final decision, will be required to conform to the plan.

The eighth is to revise the mapping of the natural features. We would request that the mapping be amended such that all kettle lakes, kettle wetlands and other significant natural features are designated as natural core areas or natural linkage areas, even where they're in settlement areas. Those kinds of features are under a lot of pressure in settlement areas.

The ninth is a request that the province should approve the moraine water management plans, and this should be done by amending section 3.3 of the plan to require completed watershed plans, water budgets and water conservation plans to be reviewed and approved by the Ministry of the Environment or other provincial body

that has the expertise to ensure that they meet the goals and objectives of the plan.

2010

The last point is to maintain natural core and linkage area boundaries. We would request that subsection 3(5) of the legislation be amended such that the 10-year review shall not consider changing the specifically designated boundaries as well as the total area of natural core areas or natural linkage areas unless that change adds to the existing natural core and natural linkage areas.

Those are our comments.

**The Chair:** Your timing was exquisite.

**Mr David Miller:** Thank you, Mr Chair. Can I quote you?

**The Chair:** Thank you very much for coming before us here this evening. We appreciate your comments.

**Mr David Miller:** A pleasure.

**Mr Gregory S. Sorbara (Vaughan-King-Aurora):** Mr Chairman, on a point of order: I'm just wondering whether the proponents this evening have been advised of the time restrictions that the government has placed on further consideration of this bill, that is, that no amendments will be allowed to be presented on the bill after 9:30 tomorrow morning.

**Mr Colle:** It's 8:30.

**The Chair:** It's actually 8:30.

**Mr Sorbara:** After 8:30 in the morning?

**The Chair:** And, yes, Ms Churley has twice gone into considerable detail in outlining the—

**Ms Churley:** He wasn't here.

**Mr Sorbara:** But have individual proponents been advised of this fact and that there will be three hours' further consideration of this bill before it's ordered for third reading?

**The Chair:** Not specifically. They are instructed—

**Mr David Miller:** I was told to get up here so we could have things fixed, but I'm not sure—I personally wasn't aware of what you're saying, Mr Sorbara.

**Mr Sorbara:** I'm actually asking a point of order question, a very technical question, whether the proponents—

**The Chair:** And I've answered it. No, they're not.

**Mr Sorbara:** Proponents were not advised that this bill had been time-allocated and that no further amendments would be allowed on the bill after 8:30 tomorrow morning?

**The Chair:** For the third time, no.

**Mr Sorbara:** Can I ask—

**The Chair:** We're now cutting into the speaking time of other groups. If you want to make a point that is best left for clause-by-clause, Mr Sorbara, might I suggest that won't interfere with the very submissions that I am assuming you actually want to hear.

**Ms Churley:** I have another point, and it's a point of order. I think it's incumbent on all of us to thank Mr Miller and the city of Toronto for their contribution to the plan that's before us today. They put considerable dollars into it and resources as well and played a huge part in developing the bill. So I think for the record, all of us

would agree that the city of Toronto and David Miller should be thanked for their contributions—

**The Chair:** I think Speaker Carr would say that's not a point of order, but it is certainly appropriate to always say thank you. And so through Councillor Miller, we do appreciate the support Toronto has given to this worthy cause.

**Mr David Miller:** Thank you, Mr Gilchrist.

## SAVE THE ROUGE VALLEY SYSTEM

**The Chair:** Our next presentation will be from the Richmond Hill Naturalists.

**Mr Glenn De Baeremaeker:** Mr Chair, Richmond Hill Naturalists and Save the Rouge Valley System are asking if we can reverse our order.

**The Chair:** That would be fine. In that case, we will move to the Save the Rouge Valley System Inc. Good evening. Welcome to the committee.

**Mr De Baeremaeker:** Thank you, Mr Chair, and members of the committee. We have a brief, and it is being handed out. We will refer to the maps during our presentation.

First of all, I would like to thank the members of the committee for spending a Wednesday night looking after the province's business instead of being out Christmas shopping and helping the economy.

Save the Rouge is here tonight to congratulate the government, to say that we support the spirit, the intent and the direction of the legislation. We see this as a significant victory for the people of southern Ontario, and we would like to congratulate the government for moving forward on protection of the Oak Ridges moraine, on what we consider to be one of the most significant natural land forms in the south-central part of this province.

When you look to the north, the provincial government did act on its Living Legacy program and Lands for Life, put forward some stunning, stunning improvements in terms of land use protection in terms of creating five million acres of parkland. And certainly our organization looks at the Oak Ridges moraine act as an extension and a continuation of the Living Legacy program that was started by Premier Harris. And certainly the park in Richmond Hill we are referring to locally as the Premier's park, so again we would like the government to know that our organization—and I'm sure if you've read some of the papers and listened to the radio—has been a very vocal critic of what we believe to be inappropriate development of the Oak Ridges moraine. We think this act goes a long, long way to addressing many of the concerns that we have had and people in southern Ontario have.

I'd like to point out to you—of course, I'm sure you know that when you look at your core natural areas that you're designating in this legislation and your wildlife migration corridors, which often consist of cornfields and farmers' fields filled with soybeans connecting the natural areas—that you're permanently protecting

roughly 300,000 acres of land with this legislation. When this legislation is passed—we think tomorrow if my information's correct—300,000 acres of land are instantly protected forever, entrusted to future generations, hopefully as a legacy that we'll leave to them, and we congratulate you for that.

Another thing that we are very happy about is the countryside designation. The legislation will protect roughly 150,000 acres of land as countryside. There is a 10-year review clause that we would suppose we'd rather not have there, but the reality of the situation is that for the next 10 years developers cannot even walk into the municipalities with a development application on some 150,000 acres of farmers' fields and farmland in south-central Ontario and, again, we think that merits your support as this legislation comes forward.

We'd like to note as well that as taxpayers we don't take lightly, as I'm sure you don't, the spending of taxpayers' money for things that it shouldn't be spent on. We'd like to congratulate the government for putting some money where its mouth is in terms of protecting the Oak Ridges moraine. Minister Hodgson announced the initial instalment of a \$15-million cash contribution to a land trust that will help secure some of the most sensitive areas across the Oak Ridges moraine, and we support that. I'm here tonight to guarantee to the government, and to all the members of the Legislature, that our organization guarantees our assistance to go out to other municipalities and to other levels of government to make sure they match your financial contributions. The advisory panel gave a total figure of approximately \$250 million that I guess they asked from the provincial government, over time, to help secure these lands. I'd like to guarantee to you, as members of the Legislature, that our non-profit, volunteer organization will be out there knocking on doors in Ottawa and at York region and at local municipalities to make sure that other governments match the funds that you're putting in.

Third, again I would like to highlight some good news in the announcements, certainly from our perspective. I'll refer to the two maps again—I'll get to those in a minute—but there's a pinch point across the Oak Ridges moraine. Some people call it the buckle; some people call it a pinch point. When you look at the 160-kilometre-long Oak Ridges moraine, roughly in the middle you've got, in a sense, a Berlin Wall of urban development—the “Yonge Street spine” as many people have referred to it in the past. This would have cut the Oak Ridges moraine in half and when we've talked to all the wildlife experts, who talk about continental-wide systems of protection to make sure the ecological health of our environment sustains itself in perpetuity, they talk about these wildlife migration corridors and these corridors that allow genetic material to flow north and south.

One of the things that I have found interesting as a layperson—I'm not a biologist; I got my degree in economics—is that even trees migrate. I used to think, yeah, I guess when those little keys fall off my maple tree, they may only go 20 feet but over a few hundred

years that genetic pool is moving north and moving south across our continent.

This legislation, combined with the Living Legacy program in northern Ontario, provides that framework for a continental-wide migration corridor. The park that the provincial government is in the process of creating in Richmond Hill, of approximately 1,000 acres, goes a long way to ensuring that the umbilical cord that exists between the east and west halves of the moraine will not be severed and that, I submit to you, is a very crucial thing. I congratulate the government for swapping lands so that these lands can come into public ownership and be permanently protected. Again, we'd like to suggest to the government that it be referred to as the Premier's park as a fitting legacy to what the government is doing on the Oak Ridges moraine.

Finally, we'd like to say that something that's often overlooked. One of the things that we environmentalists have been pleading with the government to do is to step in and have a coordinated plan across southern Ontario. We don't like the piecemeal, spot-rezoning approach to planning that has happened in the past, and when you look at the entire piece of legislation, in essence it is creating a coordinated plan for southern Ontario. Again, it's something we'd like to congratulate the government for and to let you know that we support that. We hope you'll give it your support, of course, when it comes into the Legislature.

Is your legislation perfect? No, it is not. Are there blemishes or imperfections? Yes, there are. Certainly, when I look at my own life, I don't lead a perfect life—I've even gotten 90% on some of my exams, but I never get it quite right. So we would like to give you some recommendations in terms of how we think that you could better the legislation; how you could refine the legislation to maximize the ecological health of the Oak Ridges moraine and make sure the legacy that you leave behind for future generations is one that we'll all be proud of.

#### 2020

First of all—and again, I'm going to refer to the maps now—in terms of Richmond Hill Park, when Minister Hodgson made his announcement he made a great announcement that said, “We have wildlife migration corridors across the entire length of the Oak Ridges moraine,” and if you look at this general map, it's very obvious to any layperson looking at it you've got big swaths of green as core areas and you've got big swaths of yellow as migration corridors. It's a very healthy system across the entire Oak Ridges moraine until you get to Richmond Hill, which has been urbanized.

There's nothing we can do to change the past, but the intent here, when you look across the whole moraine, is to make sure there's a healthy wildlife migration corridor. The spirit and the intent of the legislation, with its two-kilometre-wide migration corridor, has not been achieved in Richmond Hill, and we think it could. The reason it hasn't been achieved is because through a negotiated settlement some of the farmers' fields that are

there today, and some of the natural areas, have been designated as urban settlement areas. We would encourage the government, through its legislation tomorrow or as we refine the process over the next year, to secure these areas in Richmond Hill. You can see them on this one-page, 8½ by 11 map: the yellow, as you can see, and the green are the natural areas that your government is protecting. The brown areas have been designated urban settlement areas, and these areas right now are farmers' fields, natural areas, wetlands, aquifers and things like that. Our suggestion to the government is to designate these areas as a wildlife migration corridor and natural area. That would make it consistent with the rest of your plan.

If you look at the top right-hand corner where it says 404, you can see a large swath of wildlife corridor. If you look to the left of the map by Bathurst, you can see a large swath of yellow. It really does get tight in Richmond Hill and if this is going to be your legacy you don't want to invest taxpayers' money creating a 1,000-acre park that collapses because it isn't large enough to sustain the wildlife that we all want to protect. Our submission to you as a committee is that the park as it is now is spectacular, but it is not large enough in the long term to sustain the ecological processes that we all want to protect.

Second of all, we would ask you to make sure—it's under, I think, section 5.2 and section 15—that the new laws that you're creating, the new legislation that you're putting forward which we support, applies to all development applications, even ones that were approved 15 years ago. I draw a parallel to say, well, from now on, as of this day, you must have handicapped parking, but if you got your approval two years ago you don't have to have handicapped parking; or saying to people, from now on you have to have an improved fire code to make sure your buildings are safe for people to live in, but if you got your approval five or 10 years ago, before we improved the standards, you don't have to build fire-safe buildings. We always update things to community standards to make sure that we actually do have handicapped spaces, to make sure we do have a safe building code, fire code, plumbing code. So we look at the applications that we know are approved in some areas of the moraine and they're approved on old-growth forests, and some of these forests will be cut down because 30 years ago somebody just conceptually drew a square box and said, "All that's going to be urban." The legislation right now doesn't catch some of those applications, and we would urge you to change those sections to make sure the legislation applies to all applications. Again, we can't change the past, but we can influence the future.

The third thing we'd like you to consider is the countryside areas. There is a review clause that says the legislation will be reviewed in 10 years, and we support a 10-year review conceptually. It is good, like all of us, to review our financial plans, to review our environmental protection plans, but we'd like to make sure, as Minister Hodgson did. He said to us specifically he made sure that

the natural areas and the wildlife corridors could not be reduced in the 10-year review. We would ask you to change section 3 of the legislation so that the countryside areas cannot be reduced in 10 years from now, because we think what your government is doing is creating a footprint, and a blueprint, for the entire southern Ontario in terms of how we grow in the future and how our children and grandchildren will grow. We don't want to be fighting the same fights: they haven't been fun; they haven't been pleasant; they all have us here in the evening instead of going out Christmas shopping. We would ask you to close that section so we know that the agricultural lands across the moraine are protected and all of us don't have to come here in 10 years—again, missing our Christmas shopping—to talk about a 10-year review.

Finally, we would ask you to amend section 2.2 to say no new roads should be allowed in natural core areas. As an organization, I think it would have been very tempting for us to say to you, no roads through natural areas or wildlife corridors. But when you look at the map there's green and yellow across the whole map, and perhaps as much as I might love it, that would probably mean no new roads would ever be built in this part of southern Ontario because they would have to bisect these yellow or green areas. What we are asking you as a committee to do, however, is to look at your core natural areas, your most magnificent forests, your provincially significant wetlands, and say, no new roads in the most pristine and important and natural areas of this whole land use area. Unfortunately, that's the case we have with Jefferson forest. It's a magnificent old-growth forest, a designated ANSI, probably one of the most spectacular forests on the entire Oak Ridges moraine, and we have a road today being built through it.

We would ask you to avoid these mistakes in the future by saying to all the municipalities and to the regions and to the urban planners, "Build your roads but don't build them through the middle of a forest and don't build them through the middle of a wetland." Unfortunately, that's the status quo we see today.

Those are our submissions. Again, I would like to say that from my perspective looking at the Oak Ridges moraine, if it wasn't for this legislation and if it wasn't for the elimination of the estate housing in a lot of these areas, we would have seen housing spreading across the Oak Ridges moraine like chickenpox. This area would have been urbanized within our lifetimes. Everybody at this table would have seen this entire land form urbanized. The headwaters of 65 rivers in south-central Ontario would have been paved over and it would have been a catastrophe.

So I would like to congratulate the government for moving forward with this legislation, for putting forward some very strong legislation that I suppose some parts of the development community will be very upset with you about but that I'm sure the people across the 905 belt and the people in southern Ontario will be very happy with.

Those are our submissions and again we would like to say thank you very much for your initiatives. We look forward to working with you to raise money to buy even more natural areas.

**The Chair:** Mr De Baeremaeker, thank you very much. You have used the full 15 minutes. Before Ms Churley jumps in on a point of order, I think it's as fitting to thank your group, as the folks who were the recipients of the funds from the city of Toronto, for everything you've done up there and for your comments before us here this evening, and to thank Mr MacKenzie as well and all of your colleagues.

**Ms Mushinski:** I'd echo that. Mr De Baeremaeker has worked very hard for many years to protect the environment. You are to be congratulated for your part.

**Mr De Baeremaeker:** John's from Scarborough East and I'm from Scarborough West. The Rouge park was started down in Scarborough East, so I'd like to think we have sort of started a little momentum going north up to the moraine. Thank you very much.

**Ms Mushinski:** You certainly did.

**The Chair:** So watch out, Mr Miller. Thank you again.

#### RICHMOND HILL NATURALISTS

**The Chair:** Our next presentation will be from the Richmond Hill Naturalists. Good evening, Ms Helferty.

**Ms Natalie Helferty:** I'm Natalie Helferty. I'm the first vice-president of the Richmond Hill Naturalists. Thank you for allowing me to speak this evening. I'm just going to follow a little bit of what Save the Rouge has presented as far as the Richmond Hill corridor mapping, and what you have in front of you I'm going to use as the basis of my presentation.

One thing about the legislation I've noticed is that if you read section 18, which deals with Ontario Municipal Board matters, it pretty well is the justification for the land swap that has occurred. This whole section, in my opinion, should be removed or revised so that the Ontario Municipal Board hearing that has commenced—and elsewhere in Uxbridge—that was frozen during the freeze is reworked so that the Ontario Municipal Board has to apply its decisions based on the Oak Ridges Moraine Conservation Act. This section allows the minister to produce, by order, any zoning bylaw or official plan amendment, and that's why we are having the rest of the rural lands in Richmond Hill pretty well go urban in one shot. That includes all the brown areas numbered 1 to 7.

I was quite concerned actually that area 7, which falls outside of the Yonge east and Yonge west lands, was given urban status—overnight it seemed—at the Ontario Municipal Board hearing. I'm not sure who had the discussions, but Richmond Hill Naturalists, as a participant in the hearing, was never informed, never asked to provide submissions to this land swap deal.

#### 2030

Number 7 is the Gormley area. As you see, there's a bit of urban industrial land use in that area. Number 7 currently is rurally zoned. We think it's very inappropriate that urban settlement be allowed there through the section 18 provision. Right now we are left, as Glenn De Baeremaeker pointed out, with a very narrow corridor across the Oak Ridges moraine.

I am an ecologist, and I actually was an expert witness at the Ontario Municipal Board hearing for Save the Rouge, but I'm here on behalf of the Richmond Hill Naturalists because Richmond Hill had been fighting for this area for two years prior to the hearing, through local municipal zoning changes that were proposed through official plan amendment number 200 and through the Richmond Hill corridor study prior to that, which was back in 1997, I believe. We have opposed that small corridor proposal and we were lucky enough that through the Ontario Municipal Board process we got Save the Rouge to come up and sort of save the day for us in Richmond Hill by their presentations as a party at the hearing. As a volunteer group, we do not have the resources or the funding to participate in an OMB process.

As a biologist, I want to let you know another thing about why this area in Richmond Hill is so important and why section 18 should not apply, that it has to be removed or reworked. The reason is because this is also the last east-west connection across all of southern Ontario. I personally went up last week. Looking at a regular road map, you can see that Yonge Street has developed all the way up to the north part of Lake Simcoe. The two pinch points that I examined by road—I drove around all day—that I thought potentially could be alternative migration corridors connecting up north-eastern Ontario, eastern Ontario to southwestern Ontario were just south of Cook's Bay, which is Lake Simcoe. I found out that whole area is the prime agricultural area for Ontario. It has the Holland Marsh farms through there. It also has Bradford, which is expanding at a rapid rate northward. So there is maybe one isolated reserve there but there is no opportunity for migration through there. The development has already reached the point that there is no opportunity left there.

The second area I visited was the small, narrow junction between the Severn River at the north end of Lake Couchiching. I went through all of the subdivision roads through there. It's mainly large-lot rural estates, cottages, subdivisions. It would be like an obstacle course to try to get through there. I realized that Richmond Hill, in essence the moraine, is the last east-west connection for any movement for wildlife. As Mr De Baeremaeker said, this is the genetic heritage, the natural heritage of southern Ontario. If we do not protect this last east-west link, that's it: there is nothing left.

One thing about urban development that came forward through the moraine hearing just before it froze was the submission by Save the Rouge team members. This was concerning the indirect impacts of urban development next to natural features. This has not been addressed in

this legislation whatsoever. We have monitored the OPA 129 lands, which is the build-out of Oak Ridges around Lake Wilcox. We have noticed that as soon as development goes in, and high-density subdivision planning, there is a total loss of some species and a very severe decline in other species that are using any remaining habitat in those areas. The buffers need to be very large in order to buffer against urban land use.

I really urge this committee to remove or revoke section 18. Matters appealed to the Ontario Municipal Board should fall under the conservation plan, period. There is no reason and no justification to have this sort of wording in unless it's going to actually improve and protect the planning all across the Oak Ridges moraine. Right now this section is actually very detrimental to southern Ontario's natural heritage system.

That's my only submission. The rest is covered under Save the Rouge's submission.

**The Chair:** Thank you very much. That affords us lots of time for questions, about two and a third minutes per caucus. This time we'll start with Mr Colle.

**Mr Colle:** I know Save the Rouge isn't concerned about the fact that this bill can be revoked at any minute by any minister. Are you comfortable with that being in the bill? Do you agree with Save the Rouge that this bill can include that and still be permanent?

**Ms Helferty:** The other thing I was a little concerned about was—it depends on how you read it—sections 18 and 19. It says that the matters can be repealed by the Lieutenant Governor, which means that where they're allowing Ontario Municipal Board sort of loopholes, it will be repealed.

**Mr Colle:** So the ability to repeal and revoke concerns you? It doesn't?

**Ms Helferty:** Which section are you referring to?

**Mr Colle:** Section 3 and section 21, I think. I'll check that. There are two sections which have specific powers of the minister to repeal this act by regulation.

**Ms Helferty:** I would say that you'd need to have an additional clause that says only improvements to the conservation act should be allowed, that you're not allowing the repealing of the act to get rid of it or to degrade the act. So there needs to be an additional clause so that you can use the wording "enhance" if you want within the legislation, to "improve" or "enhance" it.

**Mr Colle:** Sorry I'm rushing you, Natalie. The other thing is you made a very important point here again. It's this mystery land swap that took place by the minister's maps where all of a sudden the Gormley lands, which are abutting that natural core area, with the tightness of the Richmond Hill corridor—how many acres are there?—all showed up as settlement area. Did you ever see this marked as settlement area before?

**Ms Helferty:** No, never. The settlement areas that showed here looked to be some industrial lands. There is a very small area that has a couple of streets around Gormley, but the rest is rural and it looks to me like through section 18, which is dealing with Ontario Municipal Board matters, that Yonge east-Yonge west

was approved. I don't know personally where number 7, Gormley, fits in under this act. I can't figure that out, how the minister is allowing this up-zoning without any participation by the residents. For me, it doesn't fall under this act anywhere. I'm not sure where it fits in.

**Mr Colle:** Yes, that's the mystery.

**Interjection:** The backroom.

**Mr Colle:** The Gormley backroom mystery, where it came from.

**Ms Churley:** That's the backroom deals that are going on, that we all know about.

I really appreciated your insight into this from your position. You're a biologist?

**Ms Helferty:** Yes.

**Ms Churley:** You made some very interesting comments about why it's so important that we need to protect this area, because lots of times I think we forget why we're having this conversation and it's good to be reminded.

You didn't have a lot of time. I think I have more concerns about the bill than you talked about. Some of the other groups before us today—Save the Oak Ridges Moraine Coalition, the Federation of Ontario Naturalists and others—pointed out concerns. I personally believe that if they're not fixed, we're going to have more problems. We're busy congratulating the government now but these are major holes and major problems in the bill we're trying to fix. I just want to know if you're aware of the situation we're in here where the bill's been time-allocated. We finish off this evening. All you people are here giving us these great recommendations but there's very little opportunity, if any, really, to make any changes. What are your concerns if none of those changes are made that have been brought forward vis-à-vis the very important issues that you talked about and are needed to save this area?

2040

**Ms Helferty:** I'd say it's a big mistake if the revisions aren't made and Richmond Hill in particular is not protected. Then you've pretty well severed off any linkage across southern Ontario. That's the fact of the matter. We know urban development will severely impact the remaining lands, even with the land swap deal to protect part of those lands.

Another point I should point out is that some of these lands, although they're considered urban, still have significant features. They're still in the catchment basins of wetlands, they're still in the catchment basins of Lake Wilcox. This whole area, even with all these brown development areas, shouldn't be considered urban settlement. They should fall under the Oak Ridges moraine plan. If they're not, then you're taking a huge risk that this area is not going to function appropriately.

I should mention that I'm an amphibian biologist and some of these areas are still used as migration corridors for very sensitive amphibian species. That hasn't been addressed. I just don't have the time to go through all that.

**Mr Norm Miller:** Thank you for coming here this evening. Just a couple of questions: we had an earlier group, the home builders' group, say—and I think Ms Churley raised this—that you've got to be for either intensification or against expansion—I'm getting that wrong.

**Ms Mushinski:** You can't be for both sprawl and intensification.

**Mr Norm Miller:** You have to be either for intensification and not against expansion, or one or the other, because there are more people coming to the area all the time. So obviously you have to make that choice. They respond to the demand that's there. How do you feel about intensification, I guess?

**Ms Helferty:** Richmond Hill Naturalists has never ever gone against development in our own town. I've been living there for over 20 years. I've been with the Richmond Hill Naturalists since 1997. We've never, within the huge boom time of this town, gone against development applications. I think Richmond Hill has taken its fair share of development already. It's now 160,000 people in a very small area. We've already expanded as much as the limits of the capacity of this town will allow. The whole area that's left south, the pale brown areas on this Leslie Street area up to the 404, there are still open areas that are still going to be developed. We're asking for the most sensitive lands on the moraine. The namesake for the moraine came from the town of Oak Ridges, and this is because of the high quality, the high density and the very unique features of the moraine here in Richmond Hill. As the naturalists club, we have every right to ask for the most protected area, the last east-west link, to be protected across the moraine.

**Mr Norm Miller:** On that east-west link, you mentioned you were up by the Severn River area. That happens to be the south end of my riding. I happen to fly an airplane quite a bit. Certainly north of the Severn River it's quite sparsely located and there's hardly any settlement at all. Are you speaking south of the Severn River?

**Ms Helferty:** How do they get across the Severn River and the canal?

**Mr Norm Miller:** I'm just asking for information. Are you speaking south of the Severn River or—

**Ms Helferty:** South. Think of amphibians. They can't get across the river, they can't get across the canal system unless they have a bridge, right? They have to move terrestrially. There are huge obstacles for any movement. You're talking about very small critters that need to move. They have moved into those areas because there was no impasse in the past. We had forested areas that were continuous. We had wetland areas that were continuous. We haven't got that any more. We need to provide for these species across southern Ontario or else that's it; we might as well just write off any species protection act because we're just going to genetically cause them to disappear eventually. They need to move, they need to be able to expand through evolutionary time scales.

We're not thinking long enough. We're not thinking big enough. That's what we want to see in Richmond Hill. We've dubbed this the Noah project, connecting up the Niagara Escarpment to the Oak Ridges moraine to the Algonquin-to-Adirondack corridor into a heritage system. That's what we'd like to see for southern Ontario.

**The Chair:** Thank you very much for coming before us here tonight.

#### JEFFERSON FOREST RESIDENTS ASSOCIATION

**The Chair:** Our next presentation will be from the Jefferson Forest Residents Association. Good evening. Welcome to the committee.

**Mr Heath Whiteley:** Good evening, Mr Chair and members of the committee. My name is Heath Whiteley. I'm a director of the Jefferson Forest Residents Association, and I am joined by fellow director Carrie Hoffelner.

I've allocated our presentation into three components: the first describing who the Jefferson forest association is, then how we got here today, and our comments on the draft legislation.

The Jefferson Forest Residents Association was formed in April 2000 to obtain party status at the Richmond Hill OMB hearings and to be a voice for existing residents and provide that perspective to the OMB. We have approximately 75 members living on approximately 50 properties in and around the Jefferson forest. This is located around Bayview Avenue and Stouffville Road in north Richmond Hill, and it's designated as a natural core area under the map as presently drafted.

All of our members have private wells which they rely on for their household water supply. Our members own in excess of 40 acres within the Jefferson forest. These properties are largely maintained in a natural forested state. In some cases, in excess of 95% of a particular member's property is in a forested state. We have one member who has resided there since 1936, and others who have been there since the 1950s and 1960s.

As I stated earlier, we were formed as it was a necessary requirement to obtain party status at the Richmond Hill OMB hearings. These hearings began in May 2000. At that time there had been several public statements made by members of the government to the effect that the OMB was the appropriate process for the determination of the Yonge east and Yonge west development requests, requests seeking approval for the construction of around 8,000 to 10,000 homes. They also stated that the municipalities and other stakeholders had sufficient tools to respond to these requests in that forum. It's our view that clearly the tools were inadequate. As a result of the inadequacy of the tools and the fact that around 2,000 people attended a Richmond Hill council meeting in February 2000 and there were requests made directly by the town of Richmond Hill and the region of York for intervention by the province, the province

decided to implement a freeze on the moraine in May 2001.

We believe that the deficiencies of the OMB and its process were magnified by this particular hearing. As I said, there were requests to build up to 10,000 homes. If we allocate \$100 for each house, that provided developers with \$1 million to spend on the process, whereas municipalities and, more importantly, groups like ourselves had little or no resources, and what resources we were able to obtain were after-tax dollars and not something that we could offset against any operating income the way developers can.

So clearly, the OMB process was not the appropriate forum for determination of that particular request. As a result, the government saw the light, implemented the freeze, and for a time there was much rejoicing as this stayed the OMB hearings. Also, it was our members' expectations and other members of the public's expectation that this would place the Bayview extension on hold.

We then saw the constitution of an advisory panel. Our association participated in the stakeholders daytime session as well as the evening session in Vaughan. These were meaningful public hearings. That panel submitted its recommendations that, to some extent, formed the basis of this legislation.

Finally, on November 1, we had the announcement of this draft legislation. Again, much rejoicing. The rejoicing was short-lived once we had the opportunity to read the legislation itself and, more importantly, saw the continued construction of the Bayview extension.

#### 2050

That brings me to the third component, which is our comments on the draft legislation. You've heard many comments from other groups, some of which we support, in particular the deficiencies noted by STORM and FON and the Richmond Hill naturalists. I'd like to comment on three main areas. The first is the Bayview extension.

It's our view that this is the most glaring weakness of this legislation—that is, the exclusion of the Bayview extension from the application of this act. The Bayview extension should be stopped immediately as, at a minimum, it contravenes the spirit of this legislation. As you've heard, it will sever the Jefferson forest in two. Then this road should be assessed as against the criteria in the draft plan. As we see in the plan, any roads that are to be constructed through a natural core area are to be justified as against very demanding criteria.

The Bayview extension was assessed and approved years ago on the basis that there would be housing development adjacent to it and around it that required additional access roads other than what existed at Yonge and Leslie. Under the map as presently drawn, that's not the case. There are going to be essentially no houses near Bayview between Stouffville Road and Bethesda Road—essentially, a concession lot. So what will Bayview become, other than a speedway for motorists to travel south and north, as opposed to going along Yonge or Leslie? We don't think that's good planning. We should be directing the traffic and people to what should occur

as on Yonge Street, and have sufficient public transit on that to encourage people to take that form of transportation. Also, it's going to cost \$13 million. We feel that \$13 million could be better spent elsewhere.

We've heard it said that if the criteria can't be met, be it in education or what have you, then the applicants or the people subject to the criteria should simply work harder to meet that criteria.

It's not like it's unprecedented for a major road like Bayview to end. We have Leslie ending at Steeles. It doesn't go through the German Mills conservation areas. We think that Bayview, too, should end at Stouffville and not push through the Jefferson forest.

We do have some photos that we can pass around to show you so you can appreciate what has taken place there. It has been described as a mature forest. There are trees that are in excess of 100 years old, in excess of 60, 70, 80 feet tall. Once you see the clearing that has occurred, the first thing that strikes one is the white sand that's there. None of the sand has been brought in. It's part of the moraine and it's what provides it with the ability to filter the water that all of our members rely upon for their household supply.

The second comment on the draft legislation relates to the land swap that took place. As I stated, we were a party to the OMB hearing. We did have the opportunity to meet with Mr Crombie in early October. We're not aware of the details of this land swap, despite our requests to be so informed and despite the announcement by Minister Hodgson that this swap had been agreed to by the various parties to the OMB hearings. We believe that the land swap mechanism should be included in the legislation so it can be demonstrated to the public that it's appropriate in the circumstances. More importantly, should a land swap be necessary or warranted in the future, to further the intent of the legislation, there should be this standard by which lands can be swapped.

It also appears now that this land swap has resulted in the redesignation of 600 hectares of land west of Leslie between Stouffville and Bethesda from countryside to settlement. That too is a concern to us as that borders upon the Jefferson forest.

The third component is the lack of meaningful public hearings. We don't know how the government has come to see fit to allocate three hours of time this evening for selected stakeholders to speak, at a time when the legislation has apparently already been determined.

We are displeased at the exclusion of two individuals in particular: Josh Matlow of Earthroots, who has been a tireless worker and I think would have been able to passionately articulate some of the issues for both of our benefit, and also Wynn Walters of Uxbridge. I think he too would have provided tremendous insight to this committee with his eloquent articulation of some of the issues, which he has done on many occasions before. I would urge this committee to recommend meaningful public hearings so that you and your colleagues can have the benefit of their insight and wisdom.

I do, however, thank you on behalf of our association for the opportunity to speak this evening. I hope that you and your colleagues will give serious consideration to the many meritorious comments made tonight and halt the expedited passage of this draft legislation.

I have brought with me our comments that we submitted. I was told that we should bring along 20, so I have slightly more than that. I can provide that to you and leave that for your consideration.

**The Vice-Chair:** Great. That allows us three minutes for questions. It's the NDP's turn.

**Ms Churley:** Thank you very much.

**Ms Mushinski:** That's the second time she's had three minutes.

**Ms Churley:** I know. I'm doing well tonight, but to what end?

Thank you very much for your presentation. Every time I hear about that huge meeting in Richmond Hill that I missed because I was sick—I remember a Tory brought it up—I'm so regretful that I didn't make it. It sounds like it was quite a meeting, and I want to thank you for the work that you've done to get us where we are tonight.

I have a lot of questions but there's a short time. I wanted to speak to you specifically about the Bayview extension. We were just given a press release from York region saying that there was a lot of misinformation about that. They say in their press release that the Ministry of the Environment approved the extension in 1998—well, we know that—but that it has passed every legal challenge. More importantly, it says that it doesn't conflict with legislation on the Oak Ridges moraine and it includes the creation of wetlands and all of these kinds of things.

I'm with you on this. I don't support the extension. There are a couple of things. The iron law of building new highways: we know now from studies that development comes when you extend or build a new highway. The other thing we know now is that it's wishful thinking, when we have gridlock and trouble with too much traffic and you extend or expand a highway, that it actually deals with the problem. Of course, the more urban sprawl we have, the more traffic we're going to have on those roads. It's backwards, old-style forms of planning, extending and building these new highways. I understand there are going to be two: an extension and a new highway that would be going through the Oak Ridges moraine.

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I guess I just wanted to say to you that your concerns are well noted. We have a short opportunity for some amendments tomorrow. It's not likely that any—I don't know for sure. I'm hoping that the government can be swayed tonight to listen to some of it. I just want to say to you that we're with you on this Bayview extension thing and we have an opportunity to continue fighting that. I don't know if you have any comments in any way.

**Mr Whiteley:** I'll ask the region of York to be provided with a copy of that media release. I don't think

we've been invisible and they haven't seen fit to share that with us in a more timely manner, so I can't respond directly other than to say that at the rally held a week ago, we had many of our members and supporters from other groups like Earthroots. Our members include professionals—be it doctors, lawyers, engineers, nurses, entrepreneurs, and just people all across the spectrum—and that rally, which was no secret, resulted in more than 30, 40 police, be they members of the special crowd control squad, and I just thought the response was disproportionate and inappropriate in the circumstances. If they had concerns, again, they should know who we are because we've been out in the public and they should feel free to contact us and inform us if we have been misinformed.

**Ms Churley:** Is my time up?

**The Chair:** Bang on. Thank you for coming before us here this evening. We appreciate it very much.

## SIERRA CLUB

**The Chair:** Our next presentation will be from the Sierra Club. Welcome to the committee.

**Ms Trista Barber:** Good evening. My name is Trista Barber. I'm the vice-chair of the children's summer outing program for the Sierra Club. I'm speaking tonight on behalf of the Sierra Club.

The Sierra Club commends the government for making an attempt to protect the Oak Ridges moraine but is very concerned about the content of the legislation and the process through which it is being passed. The Sierra Club is outraged that the government is not holding true public hearings on the new moraine legislation. Tonight's hearing is a sham, because the public can speak here by invitation only.

If the government is truly proud of the new moraine legislation, they should have nothing to fear by allowing all of us to express our concerns. By curtailing legislative debate and public hearings, the government is suppressing any dissenting views about their act from coming to light.

The Sierra Club concludes that the government has no right to claim that they have held a public hearing on this legislation. Without public debate, we have virtually no chance to plug any of the massive loopholes found in the bill.

The moraine act is a temporary plan that can be thrown out or changed whenever the municipal affairs minister feels like it. In addition, these changes can be done behind closed doors, without public consultation. The legislation also allows the minister to alter the boundaries of the protected areas and it allows new gravel pits on protected areas. The Sierra Club does not call this democratic nor in the interests of protecting the environment.

The Sierra Club also objects to the land swaps that awarded moraine developers, who had not even received all their permits to build, and compensated them with thousands of acres of prime farmland in north Pickering.

This is a terrible precedent, to award speculators just because they lost their gamble that zoning laws would be changed to accommodate their gamble, making a fast buck. Now we as taxpayers will pay them to create more harmful suburban sprawl development in another location. This, to us, is a lose-lose situation.

The new moraine legislation also does nothing to stop suburban sprawl development in urban areas on and around the moraine, as was pointed out on our tour de sprawl on November 14.

Huge infrastructure projects, such as the Bayview extension and big water and sewer lines extending into King City on the moraine, will fuel suburban sprawl and the pollution impacts that threaten our environment. Passing this legislation through in complete contempt of all the moraine defenders and against the recommendations of the government's own advisory panel serves no one.

I'll direct any questions you guys have to Janet. I'm passing the buck.

**The Chair:** That affords just under four minutes per caucus for questions. We'll start with the government.

**Mr Norm Miller:** First of all, on your first point about public hearings, I can't help but think that if the government had time they'd love to drag this out for a few months because politically it's a positive thing for us to have as many public hearings as possible. But I think the other thing we're trying to do is get the bill passed. The reality is that we don't have a whole bunch of time before we leave for the winter, especially when the opposition parties keep moving adjournment of the House, so we waste hours and hours every night ringing bells around here. Having been here until midnight on Monday night, when two Liberals moved adjournment motions—it just wasted time on the passage of the waste diversion legislation. It forces us to do time allocation, because we aren't all working together to get these passed expediently.

I just have a general question for you. It sounds like you're against any form of development. From my perspective, I can't help but think that intensification of development makes sense because we don't sprawl the development everywhere. Obviously, there are more and more people coming to southern Ontario especially as time goes on. What's your solution for development for all those people who are coming here? My own personal feeling is that I like the European model, where you have reasonably tight nodes of population which then maintains the countryside and the natural areas.

**Ms Janet Pelley:** I'll take that question. I'm Janet Pelley. I'm chair of the conservation committee of the Toronto group of the Sierra Club. I'm glad to hear you make those statements about supporting denser growth. When Toronto was first formed, the city followed, as you said, the European model of transit-oriented development and it developed into a wonderful city. But somewhere after World War II, we forgot how to do that. Basically, we have Vienna surrounded by Los Angeles.

Toronto in the past has known how to grow smart and to create livable communities that don't contribute to pollution, as the sprawling suburbs do. We can do that again. We fully believe that the growth projected for the Toronto area can be accommodated within already built-up areas. We don't need new infrastructure like the Bayview extension. We don't need to extend the sewer line up into King City. This is all unnecessary. We can build better communities on a model that—you know, we know how to do this. We've done this in the past and we can do it again, and I'm glad to hear you bring that up.

**Ms Mushinski:** I'd just like to follow up on that a little bit. I was one of those suburban municipal councillors for 12 years when we were going through significant growth in Scarborough, and certainly there was an official plan that envisioned deconcentration into the suburbs so you could get some of the assessment growth to pay for transit lines which would take away the demand for more roads. This was within the Metropolitan Toronto area.

It seems to me that perhaps the biggest impediment to that is existing communities and the NIMBY syndrome. We've seen some examples just this last couple of weeks with a small development application along the Danforth for a group home, for example, or for more intensification along the Danforth.

I guess the problem for both local politicians, who of course are elected locally, and provincial politicians is trying to ameliorate or at least balance the local interests to the larger issue, which is of course how you deal with new growth, especially when it is beyond the control of the local municipality, the regional municipality and the province. I'm talking particularly about Toronto being the largest recipient of a very diverse population. I think that's great for the city, but at the same time it brings huge demands in terms of those newer communities wanting their own housing. How do you balance the needs of a new population like that with strengthening the vision that Sierra obviously has in terms of intensification within the urban core?

**Ms Pelley:** It's clear that you have to involve local communities in their growth. They have to come as partners to the table, with powers equal to those of other stakeholders. The problem we often run into is that the communities and the environmentalists don't have the powers at the table that the developers often do, so the process is skewed and you get adversarial situations. Really, the whole process needs to be changed. All parties need to have equal powers, an equal voice at the table in what their community is going to look like. I think if you do that you're going to get more co-operation and you'll have better communities as a result.

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**Mr Colle:** I want to commend Trista for her courage in saying what a lot of other people have not said tonight, that other people should have been given the right to make public deputations and have been deprived of that. Some of them have been named, and there are hundreds of others like Wynn Walters and Earthroots that have

been deprived of this right, say, Marianne Yake and so many people here, Nancy Hopkinson.

In essence, we are told by the government that there's no time. Well, this is a government that only sits 90 days a year. They're going to take off in about a week or so for another four or five months; we'll never see them. We've told them that we'll sit here right through Christmas, January. Come back in January, February—do you want to do that?—and get this thing done right. At least give the people who have been working on this for 10, 12 years the courtesy to comment and make their recommendations on the legislation to perhaps make it stronger.

What are we faced with tonight? You're going to be led to believe that your deputations will be listened to, that the bureaucrats and the PR people of the government will be working all night long at their computers, listening to your deputations, consulting with Mr Hodgson, consulting with Mr Harris, and coming up with their amendments. Frankly, folks, the amendments are already done. We're going to get a couple of easy ones probably to try and contain some of the damage, and then ours they'll all vote down. It is a sham in that regard.

That's too bad, because this legislation was done with the work of people like you and the thousands out there who did so much work. They deserve to be treated with courtesy and fairness. I'm glad you stated that, because more than the details of the legislation is the fact that the moraine belongs to all of you who've worked to protect it and to keep on protecting it. I'm so glad that you brought up the fact that there are so many loopholes in this bill that can be improved.

But I've said before that the reason they don't want public hearings is because they don't want you talking about these secret land swaps where developers have benefitted with \$3 million or \$4 million in their back pocket. That's what they don't want you to know about. They don't want you to know about the Gormley lands that were given away. They don't want to let you know that Bayview is being bulldozed as we speak. They don't want you to know what's happening in King City, that that's going to be in essence wall-to-wall cookie-cutter homes because of this legislation. So they want to get it through.

For those of us who have been fighting for this the last number of years, who were told we were crazy for even talking about the Oak Ridges moraine by the people across here for the last three years, at least we've got to take the little we've got from them. It's unfinished business, but we'll take this little bit they've given us and we'll finish the job when they're gone. That's what I give you.

**Ms Churley:** Ms Barber, thank you for your presentation. It was tremendous. I just want you to know—

**Mr Chudleigh:** Remember what you said now.

**Mr Dunlop:** I'm assuming you're voting against the bill.

**Ms Churley:** I'm talking to Ms Barber here.

**Mr Colle:** We'll finish the job when you're gone.

**The Chair:** Order.

**Ms Churley:** Excuse me. I'm trying to have a conversation. I was congratulating Ms Barber for her comments and telling her that I started off as a community activist and environmentalist and ended up here. You may well some day. You did a very good presentation and spoke very well. It's really nice to have a young person like you here giving your views. I think for all of us it was refreshing, and I'm looking forward to watching your career as it advances.

You made some important points. I'm afraid that the Vice-Chair of the committee, Mr Norm Miller, got himself into a little trouble here—we were going along OK, without getting too partisan late in the evening—accusing the opposition and saying it's our fault this is happening so quickly. I must protest and get on the record that it was the Liberals and the NDP who, when the bill was first introduced, allowed it to go through that reading quickly so we'd get it out to public hearings and do all these things.

But now, here we have this bill before us. This is the time when all the flaws that are being pointed out need to be fixed, because otherwise we're going to have a flawed bill. Why not take a couple of extra weeks or months? Why not come back, even if it's for a day or two later on, to get it finished? But let's get it right now. What the government is doing here is losing an opportunity. They have been getting good press over this and there have been people here tonight congratulating them. But if this bill is passed in this form, things are going to start falling apart and then they're going to hear about that. So why not do it right and fix it now? That's what you're saying tonight.

I just wanted to speak quickly about the difficulty in our own ridings with intensification. There is a housing project in my riding, which Ms Mushinski referred to. Well, what I do is that I support it. It means that some of my constituents are mad at me and I go to these meetings and get yelled at. We thrash it out, and we deal with it together as a community. But if we really want to move forward on some of these things, we have to have politicians who understand the need to do this and work with the community. Some people will be mad at you, but that's what we have to do: we have to take a stand. To get affordable housing in our communities, we've got to take that stand and be firm about it.

That's all I have to say. Your presentation was excellent. Thank you.

**The Chair:** Thank you both for coming here this evening. We appreciate it.

#### CONSERVATION AUTHORITIES MORAINE COALITION

**The Chair:** Our next presentation will be from the Conservation Authorities Moraine Coalition. Welcome to the committee.

**Mr David Burnett:** Good evening, Mr Chairman and committee members. Thank you for letting me appear before you tonight.

My name is David Burnett. I'm a senior planner with the Toronto Region Conservation Authority. I am appearing before you here tonight on behalf of the Conservation Authorities Moraine Coalition.

The coalition was formed in early 2000 by nine conservation authorities with watersheds on the Oak Ridges moraine. Those conservation authorities include Credit Valley, Nottawasaga Valley, Toronto and Region, Lake Simcoe Region, Central Lake Ontario, Kawartha Conservation, Ganaraska Region, Otonabee, and the Lower Trent Region Conservation Authorities.

The mission of the coalition is to advance the science and understanding of the Oak Ridges moraine and to work toward government agency and community support for the conservation and protection of the form, functions and linkages of the Oak Ridges moraine. We've been active, in the year and a half since our existence, in a number of policy planning initiatives, very active with the three-region Oak Ridges moraine process, with the regions of Peel, York and Durham. As well, we are managing the groundwater management strategy on behalf of the three regions. That's been occurring for the last 18 months and is continuing to occur.

We believe that the coalition's broader geographic base has also allowed us to engage municipalities in eastern Ontario and the eastern portion of the moraine as well as the northern sections of the moraine in discussions of policy directions and scientific studies required to protect the Oak Ridges moraine. The coalition's broad geographic but local and science-based watershed management approaches bring a valuable and unique perspective to our comments and thoughts on the Oak Ridges moraine conservation plan and legislation.

First of all, we'd like to applaud the provincial government for taking this significant step forward to protect the features, form and function of the Oak Ridges moraine. The coalition supports a number of elements in the conservation plan and the legislation. I will just identify a few of those things that we do support, right off the bat.

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We support that there's a greater emphasis on the protection of water resources and requirements for water management studies. We support the concentration of new growth in existing settlement areas. We support the protection of the moraine through a legislated plan. We support the designation of 62% of the lands within the moraine as natural core or natural linkage areas where there's a general prohibition on development within those significant natural heritage features and hydrologically sensitive features.

We also support the clauses, in both the plan and the legislation, which prohibit the core areas and the linkage areas from being reduced through any further plan review or future plan review. We also support that official plans and zoning bylaws are required to be amended and "shall conform" to the Oak Ridges Moraine Conservation Plan.

We support also that growth management and land consumption needs must be assessed on a region-wide scale as opposed to on an individual community basis, thereby contributing to a Smart Growth approach to managing urban growth.

Finally, we also support the provision for a trail to be established along the entire length of the Oak Ridges moraine.

Having said that, there are a number of areas where we feel that the legislation or the conservation plan should be amended and can be strengthened. A few of those areas, in general, are limiting the unilateral discretionary powers of the minister to amend or revoke the plan, clarification of the scope and responsibility for undertaking watershed plans, further controls on aggregate extraction on the moraine, modifications or deletions to uses permitted within some of the land use designations, as well as some glossary amendments.

To touch on the first one of those issues that I've identified as areas for strengthening or improvement, the legislation provides the Minister of Municipal Affairs and Housing with broad powers to revoke or amend the conservation plan or to make zoning orders not in conformity with the plan and without consultation or legislative approval. We feel that these powers are too broad. Any minister's zoning order should be required to conform to the objectives of the plan and any decisions to amend or to revoke the plan should be subject to public consultation and legislative approvals. The coalition recommends that the unilateral discretionary powers of the minister to amend the plan or revoke the plan be removed, that minister's zoning orders be required to conform with the plan, and that an open public process be required for all proposed amendments to the plan.

We're pleased to see that a number of the previous coalition comments on the Share Your Vision document have been incorporated into the legislation and the conservation plan. However, some of our previous comments regarding new agricultural uses as a permitted use in natural core areas have not been addressed. We feel that this may permit, for instance, the cutting of woodlands for new pasture lands or agricultural sheds and buildings, as well as the siting of intensive livestock operations in areas of groundwater sensitivity or vulnerability. We feel that provisions should be incorporated into the plan to restrict new agricultural operations from significant natural heritage features and also from hydrologically sensitive features and to provide for nutrient management plans where these types of operations have the potential to impact on groundwater.

The coalition recommends that new agricultural uses be subject to the same restrictions as the term "development and site alterations," as defined in the glossary, such that they would be prohibited in significant natural heritage features and hydrologically sensitive features and that provisions for nutrient management plans be required for intensive agricultural operations proposed within the minimum area of influence for hydrologically sensitive features.

We are also requesting an amendment to an existing permitted use within the natural core areas. The first use in that section is listed as “fish, wildlife and forest management” and we believe that should be amended to read “fish, wildlife and sustainable forest management.” The glossary defines forest management with an emphasis on the economic values of forest products and its accessory uses such as access roads. We feel this needs to be tempered by the use of the modifier “sustainable,” which is also defined in the glossary, to incorporate the concept of maintaining the ecological and hydrological integrity of the Oak Ridges moraine, which is the central theme of the conservation plan. The coalition therefore recommends that all instances where the term “forest management” is used be amended to read “sustainable forest management.”

Again, we're very pleased to see that the concept of watershed plans has been very much taken to heart in this new conservation plan for the moraine, and we note in particular that section 3.3 requires that watershed plans, water budgets and water conservation plans be undertaken and that the results be incorporated into municipal official plans. While we're very heartened to see this, we feel this section is deficient or incomplete in two aspects.

The scope of these plans is limited to largely ground and surface water issues only. At the minimum, the watershed plans should also include the study and formulation of terrestrial natural heritage strategies. Woodlands and other terrestrial environmental features are critical to the protection of water quality and quantity, as has been demonstrated through the reforestation efforts that occurred on the Oak Ridges moraine throughout the 1930s and 1940s.

The second point is that the plan also contemplates that only municipalities will undertake these plans. It fails to recognize the long history of conservation authorities in undertaking these kinds of watershed studies and management plans. Specific targets contained in section 3.3(f) and (g) with respect to maximum amounts of impervious surfaces in watersheds on the moraine, listed at 10%, and ensuring the maintenance of minimum amounts of natural self-sustaining vegetation, listed at 30%, need to be coordinated through these watershed plans. Additionally, a provision for the provincial funding of subwatershed plans should also be made for areas containing large expanses of natural core areas, where development potential is going to be very limited in any event, and where municipalities, especially in the eastern portion of the moraine, have limited financial resources to carry out these kinds of studies.

The coalition recommends that in section 3.3, conservation authorities be identified as the agency appropriate to carry out watershed plans and watershed budgets and be funded by the province to do so and that the components of watershed plans, as identified in section 3.3(a), be amended to include natural heritage strategies.

The coalition also has a number of comments with respect to section 4.6, mineral aggregate operations, and we believe that several amendments should be made

within that section to ensure the full protection of the ecological and hydrological integrity of the Oak Ridges moraine. Subsection (b) permits extraction in the natural linkage areas, subject to a number of conditions, one condition being that there should be no extraction within 1.5 metres of the water table. This provision, we feel, should also be applied to extraction operations in the countryside areas designation.

Subsection (d) of 4.6 permits extraction and wayside pits within portions of the significant natural heritage features. We believe this subsection should be deleted. Further, considering the scale and the extent of aggregate extraction sites in certain areas of the moraine, we believe a provision should be made in the plan for an assessment of the cumulative impacts or the cumulative effects of numerous aggregate sites within a fairly confined area. We believe that one way this could be accomplished would be by including aggregate extraction sites within the definition of “large-scale development” and making it subject to the provisions that no large-scale development would be permitted after five years unless the required watershed plans and water budgets have been completed and incorporated into the municipal official plans.

With respect to aggregate operations in 4.6, the coalition recommends to limit aggregate extraction within the countryside areas as well as in the linkage areas to 1.5 metres above the water table; to delete section 4.6(d), which permits aggregate extraction in portions of significant natural heritage features in the core and linkage areas; and also to include new aggregate extraction sites in the definition of “large-scale development” so that it is subject to the five-year requirement to complete watershed plans in order to ensure that the cumulative effects of aggregate extraction can be assessed.

Section 4.10 is another section which the coalition believes needs some fine-tuning. That section is small-scale commercial, industrial and institutional uses. In that designation, in the countryside areas new uses such as schools, places of worship, community halls and retirement homes are listed as permitted uses. The coalition believes these types of uses do not conform to the objectives of the countryside area to focus on the protection of agricultural, rural and environmental resources. Further, these uses do not conform to Smart Growth objectives of concentrating urban uses within settlement areas to minimize the need for single-purpose automobile-dependent transportation. These new uses should only be permitted in the rural settlement component of the countryside area designation and in the settlement areas themselves, as they are urban-supportive uses.

The coalition recommends that schools, places of worship, community halls and retirement homes be restricted or deleted from subsection 4.10(a) as permitted new uses and restricted to only the rural settlement component of the countryside areas in order to be consistent with Smart Growth principles.

Section 5.3, provincial obligations and technical support, we believe should also be amended to include

provisions for a secretariat to oversee the implementation of the Oak Ridges moraine conservation plan. We don't believe there is a requirement for a Niagara Escarpment-type commission. We believe that our regional partners and upper-tier municipalities, once the conformity exercise has been done, are responsible partners and will ensure that the provisions of the moraine plan are adhered to in the decisions they make regarding planning applications. But the coalition does recommend that a secretariat be formed within the Ministry of Municipal Affairs and Housing to oversee implementation of and conformity with the moraine conservation plan.

Subsection 5.6(d) lists a number of requirements municipalities must undertake to justify expansion to settlement area boundaries on the moraine. The final bullet in that list requires water budgets and water conservation plans as one requirement to fulfill. However, the coalition feels this is not broad enough and that the reference should be to subsection 3.3(a). This would include the broader-scale watershed plans, which include water budgets and water conservation plans as components therein, and their requirement to identify land and water use and natural heritage strategies. The coalition recommends that subsection 5.6(d), the last bullet point, be amended to reference subsection 3.3(a) so that adopted watershed plans are the criteria needed to consider expansion of settlement area boundaries.

The coalition also shares some of the concerns you've heard tonight about the lands in the vicinity of Gormley near Highway 404 and Stouffville Sideroad in the headwater areas of the Rouge and the Humber Rivers, which appear to have had their designation changed from countryside area, in the Share Your Vision document, to

settlement areas. Staff at the authorities have little information to understand the basis for this change. We believe that full public disclosure is required of the details of the land swap and that should these lands continue to be designated as settlement areas, the lands should be subject to full environmental studies in accordance with the Oak Ridges Moraine plan and objectives.

In closing, I'd just like to state that conservation authorities are the largest land owners on the Oak Ridges Moraine and have a long, 50-year history of environmental and water management programs and activities on the moraine. It's appropriate that conservation authorities play a significant role in the acquisition, stewardship, study, monitoring, planning and management of lands on the moraine. Conservation authorities have the watershed-based programs and policies and experienced scientific and technical staff to undertake this work. With proper funding and support from the province, municipalities and the proposed Oak Ridges Moraine Foundation, conservation authorities are prepared and eager to play their part in ensuring the long-term protection of the Oak Ridges moraine.

**The Chair:** Thank you, Mr Burnett. I indulged you a little bit. That's the advantage of having a written brief so we were able to follow you along, but we've actually gone a bit over time.

**Mr Burnett:** My apologies.

**The Chair:** Thank you for your presentation. Thank you to all who presented tonight. The committee stands adjourned until tomorrow morning at 10 o'clock.

*The committee adjourned at 2134.*







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## **Legislative Assembly of Ontario**

Second Session, 37<sup>th</sup> Parliament

## **Assemblée législative de l'Ontario**

Deuxième session, 37<sup>e</sup> législature

# **Official Report of Debates (Hansard)**

Thursday 6 December 2001

# **Journal des débats (Hansard)**

Jeudi 6 décembre 2001

## **Standing committee on general government**

Oak Ridges Moraine  
Conservation Act, 2001

## **Comité permanent des affaires gouvernementales**

Loi de 2001 sur la conservation  
de la moraine d'Oak Ridges



Chair: Steve Gilchrist  
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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Thursday 6 December 2001

Jeudi 6 décembre 2001

*The committee met at 1004 in room 151.*OAK RIDGES MORaine  
CONSERVATION ACT, 2001LOI DE 2001 SUR LA CONSERVATION  
DE LA MORaine D'OAK RIDGES

Consideration of Bill 122, An Act to conserve the Oak Ridges Moraine by providing for the Oak Ridges Moraine Conservation Plan / Projet de loi 122, Loi visant à conserver la moraine d'Oak Ridges en prévoyant l'établissement du Plan de conservation de la moraine d'Oak Ridges.

**The Chair (Mr Steve Gilchrist):** Good morning. I call the meeting to order for clause-by-clause consideration of Bill 122, An Act to conserve the Oak Ridges Moraine by providing for the Oak Ridges Moraine Conservation Plan.

First off with section 1: shall section 1 carry? Section 1 is carried.

**Mr Mike Colle (Eglinton-Lawrence):** On a point of order, Mr Chair: As you know, there are a lot of maps that have been part of this bill and plan. Would we know whether there's been any changes to the maps and their designation as settlement areas or core areas? Is that anything that has taken place by the ministry as part of these amendments, or have the maps basically not been amended? That's all.

**The Chair:** I think what might be appropriate, Mr Colle, is that we'll ask one of the ministry—excuse me one sec.

The clerk informs me that would probably be outside the House order, which has said that we cannot have debate. I'm afraid that question will have to go unanswered.

**Mr Colle:** No, I was just asking if there were any changes and if there's anything before us, that's all—there might not have been—on the maps.

**The Chair:** My understanding is that nothing we do here today in any way freezes any map in any particular order, but again that's—

**Mr Colle:** No, did the government, say, make any changes to the map? That's what I've asked for.

**The Chair:** My understanding is that nothing we are doing here ties the map and in fact that's something that will continue to evolve. However, since we're not allowed to have debate, I didn't even say that.

Section 1 was carried.

Moving on to section 2, I will simply refer to them by the packet number. The House motion does not require we even have a movement.

So the first amendment: NDP, marked as motion number 1, to section 2. All those in favour? Opposed?

**Ms Marilyn Churley (Toronto-Danforth):** Could we have a recorded vote, please?

**The Chair:** Ms Churley has asked for a recorded vote. All those in favour?

Actually, the clerk advises me we have to stack any recorded votes, so we will defer that one.

**Ms Churley:** May I have a clarification? Does that mean that we ask for each one still that we want recorded but they'll be stacked at the end?

**The Chair:** That's correct.

**Ms Churley:** OK. And can I be clear that the House order is that we can't explain our reasons for these amendments?

**The Chair:** That is correct.

**Ms Churley:** We simply read them all out?

**The Chair:** No, we don't even read them.

**Ms Churley:** And I was up half of the night writing my explanations for these. OK.

**Mr Colle:** May I get that clear? In other words, government amendments or our amendments cannot be explained; the rationales can't be explained?

**The Chair:** No, they're already deemed to be moved and we are not allowed to have debate.

**Mr Colle:** This is incredible. Anyway, I'm not sitting, Mr Chairman, but is this the House rule? OK.

**The Chair:** The next amendment is the one marked number 2 in your packet to section 2 of the bill. Actually, that one is identical so it is deemed to be withdrawn.

**Ms Marilyn Mushinski (Scarborough Centre):** That's Liberal motion 2?

**The Chair:** That would be the Liberal motion number 2. So we will defer the vote on section 2 because we deferred the vote on the amendment to section 2.

The next amendment is the NDP motion, marked number 3, to section 3. All those in favour? Opposed? It is lost.

**Ms Churley:** Mr Chair, on a point of privilege or order or whatever: I just want it on the record that I'm walking out in protest, that I refuse to stay and participate in this sham. As I said, I was up half the night working on these resolutions. Perhaps it's my own fault that I didn't read the House order thoroughly enough, but I

thought that we were going to be able to at least, in a few seconds or minutes, explain the reasons for amendments. There's no point in my being here, so in protest I'm walking out.

**Mr Colle:** Basically, Mr Chairman, I concur that if we can't speak or the government can't speak to even the rationale or read the amendment into the record—I have never seen this before. I think it's totally undemocratic and it is making a farce of what could be a good bill by not even allowing us to read our comments on our amendments that we've worked all night on. I just find this totally unacceptable, and I will withdraw in protest also.

**Ms Mushinski:** On a point of order, Mr Chairman: I take it that the process as established this morning was concurred in by the House leaders for all three parties?

**The Chair:** I can't speak to that, Ms Mushinski. All I can tell you is that was the motion that was passed in the House.

**Ms Mushinski:** So for those members who have been here for six years at least and still don't know the process, they'd better learn pretty quickly.

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**The Chair:** Thank you for that comment.

Given the circumstance, I'll return to the first amendment in your package, the NDP motion, number 1, to section 2. All those in favour? Opposed? It is lost.

Shall section 2 carry? Section 2 is carried.

Back to section 3. We have dealt with amendment number 3.

The next amendment is the Liberal motion, marked number 4, to section 3. All those in favour? Opposed? That amendment is lost.

The next amendment, number 5, is a government motion, an amendment to section 3. All those in favour? Opposed? It is carried.

The next amendment, number 6, is a government amendment to section 3. All those in favour? Opposed? It is carried.

The next amendment, marked number 7, is a government amendment to section 3. All those in favour? Opposed? It is carried.

Shall section 3, as amended, carry? It is carried.

Section 4: the next amendment, marked number 8 in your package, is an amendment to section 4 by the government. All those in favour? Opposed? It is carried.

The next amendment is an NDP motion to section 4, marked number 9 in your packet. All those in favour? Opposed? It is lost.

The next amendment is the Liberal motion, marked number 10 in your packet, to section 4.

*Interjection.*

**The Chair:** Let's just redo number 9, the NDP motion to section 4. All those in favour? Opposed? It is lost.

Number 10, the Liberal motion.

**Ms Mushinski:** It's the same as 9.

**The Chair:** You are correct. So it will be deemed to be withdrawn.

Shall section 4, as amended, carry? Section 4 is carried.

Section 5: the first amendment is a Liberal motion, marked as page 11. All those in favour? Opposed? It is lost.

The next amendment is a Liberal motion, marked number 12, to section 5. All those in favour? Opposed? It is lost.

Shall section 5 carry? It is carried.

Shall sections 6 and 7 carry? Sections 6 and 7 are carried.

Section 8: there's a Liberal amendment, marked number 13 in your packet. All those in favour? Opposed? It is lost.

Shall section 8 carry? It is carried.

Moving on to section 9, the first amendment is a government motion, marked number 14 in your packet, to section 9. All those in favour? Carried.

The next amendment is an NDP motion, marked number 15, to subsection 9(2). All those in favour? Opposed? It is lost.

The next amendment, marked number 16, is a government amendment to subsection 9(2). All those in favour? Opposed? It is carried.

The next amendment is a government motion, marked number 17, to subsection 9(3). All those in favour? Carried.

The next amendment is a government motion, marked number 18, to subsections 9(5) and 9(6). All those in favour? Carried.

The next amendment is a government motion, number 19, to clause 9(9)(a). All those in favour? It is carried.

The next amendment is a Liberal motion, marked number 20, to subsection 9(11). All those in favour? Opposed? It is lost.

Shall section 9, as amended, carry? It is carried.

Section 10: the government amendment, marked number 21, to subsection 10(1). All those in favour? Opposed? It is carried.

The next amendment is a Liberal motion, number 22, to subsection 10(3). All those in favour? Opposed? It is lost.

The next amendment, number 23, is a government motion to subsection 10(3). All those in favour? Carried.

The next amendment is a government amendment, marked number 24, to subsections 10(4), 10(4.1) and 10(4.2). All those in favour? It's carried.

The next amendment is an NDP motion, marked number 25, to clause 10(6)(b). All those in favour? Opposed? It is lost.

The next amendment is a Liberal motion, number 26, to 10(6)(b). All those in favour? Opposed? It is lost.

The next amendment is an NDP motion, number 27, to subsection 10(6.1). All those in favour? Opposed? It is lost.

The next amendment is a government motion, number 28, to subsections 10(9) and (10). All in favour? Carried.

Shall section 10, as amended, carry? It is carried.

Section 11: the next amendment, number 29, is a government amendment to subsection 11(2). All those in favour? Carried.

Shall section 11, as amended, carry? It is carried.

Section 12: the first amendment is a Liberal motion, number 30, to section 12 of the bill. All those in favour? Opposed? It is lost.

The next amendment is an NDP motion, marked number 31, to subsection 12(5). All those in favour? Opposed? It is lost.

The next amendment is a government motion, number 32, to subsection 12(11). All those in favour? Opposed? It is carried.

Shall section 12, as amended, carry? It is carried.

Section 13: government motion, number 33, to subsection 13(7). All those in favour? Carried.

Shall section 13, as amended, carry? Carried.

New section 13.1 is an NDP motion, marked number 34. All those in favour? Opposed? It is lost.

Section 14: number 35 is not a motion and number 36 is not a motion, which begs the question, shall section 14 carry? It is carried.

New section 14.1, marked 37 in your package, an NDP motion. All those in favour? Opposed? It is lost.

The next amendment is number 38, a Liberal motion, creating new sections 14.1, 14.2 and 14.3. All those in favour? Opposed? It is lost.

Moving on to section 15, the first amendment is an NDP motion, marked number 39, to subsections 15(1) and (2). All those in favour? Opposed? It is lost.

The next amendment is an NDP motion, number 40, to subsection 15(4). All those in favour? Opposed? It is lost.

The next amendment, marked number 41, is an NDP motion, to subsection 15(5). All in favour? Opposed? It is lost.

The next amendment is a government motion, marked number 42, to clauses 15(5)(a) and (b). All those in favour? It is carried.

The next amendment is a government motion, number 43, to clause 15(5)(i). All those in favour? Carried.

Shall section 15, as amended, carry? It is carried.

Shall sections 16 and 17 carry? They are carried.

Section 18: number 44 is not a motion.

Shall section 18 carry? It is carried.

Shall section 19 carry? Section 19 is carried.

New section 19.1, marked number 45 in your package, a Liberal motion. All those in favour? Opposed? It is lost.

Moving to section 20, government motion number 46, subsection 20(7). All in favour? Opposed? It is carried.

Shall section 20, as amended, carry? Carried.

Shall section 21 carry? It is carried.

Section 22: there is a Liberal motion, marked number 47 in your package. All those in favour? Opposed? It is lost.

Shall section 22 carry? It is carried.

Section 23: the first amendment is a Liberal amendment, marked number 48 in your package. All those in favour? Opposed? It is lost.

The next amendment, marked number 49, is an NDP motion to clause 23(1)(c). All those in favour? Opposed? It is lost.

The next amendment is a government motion, number 50, to clause 23(1)(c). All those in favour? Opposed? It is carried.

The next amendment is an NDP motion, marked number 51, to clause 23(1)(g). All those in favour? Opposed? It is lost.

Shall section 23, as amended, carry? It is carried.

The next amendment is a Liberal motion, number 52, to subsection 24(7). All in favour? Opposed? It is lost.

Shall section 24 carry? It is carried.

Shall sections 25 through 27 carry? Sections 25 through 27 are carried.

Shall the title of the bill carry? It's carried.

Shall Bill 122, as amended, carry? It is carried.

Shall I report the bill, as amended, to the House? Agreed. Thank you. I shall report the bill, as amended, to the House.

With that, the committee stands adjourned until 3:30 next Monday.

*The committee adjourned at 1020.*





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Mr Steve Gilchrist (Scarborough East / -Est PC)

Mr Dave Levac (Brant L)

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ISSN 1180-5218

## Legislative Assembly of Ontario

Second Session, 37<sup>th</sup> Parliament

## Assemblée législative de l'Ontario

Deuxième session, 37<sup>e</sup> législature

# Official Report of Debates (Hansard)

Monday 10 December 2001

# Journal des débats (Hansard)

Lundi 10 décembre 2001

### Standing committee on general government

Ontario Society  
for the Prevention  
of Cruelty to Animals  
Amendment Act, 2001

### Comité permanent des affaires gouvernementales

Loi de 2001 modifiant la Loi  
sur la Société de protection  
des animaux de l'Ontario



Chair: Steve Gilchrist  
Clerk: Anne Stokes

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## LEGISLATIVE ASSEMBLY OF ONTARIO

## ASSEMBLÉE LÉGISLATIVE DE L'ONTARIO

STANDING COMMITTEE ON  
GENERAL GOVERNMENTCOMITÉ PERMANENT DES  
AFFAIRES GOUVERNEMENTALES

Monday 10 December 2001

Lundi 10 décembre 2001

*The committee met at 1609 in committee room 1.*

## SUBCOMMITTEE REPORT

**The Chair (Mr Steve Gilchrist):** I call the committee to order for clause-by-clause consideration of Bill 129, An Act to amend the Ontario Society for the Prevention of Cruelty to Animals Act.

Starting off with section 1, are there any amendments? I beg your pardon—the report of the subcommittee.

**Mr Dave Levac (Brant):** The standing committee on general government report of the subcommittee on committee business:

Your subcommittee met to consider the method of proceeding on Bill 129, An Act to amend the Ontario Society for the Prevention of Cruelty to Animals Act, and recommends the following:

(1) That the committee schedule clause-by-clause consideration of Bill 129 on Monday afternoon, December 10, 2001.

(2) That any proposed amendments should be filed with the clerk of the committee by 1 pm on Monday afternoon, December 10, 2001. So submitted.

**The Chair:** Will you move its adoption?

**Mr Levac:** I move that it be adopted.

**The Chair:** All those in favour? Opposed? The report is carried.

ONTARIO SOCIETY  
FOR THE PREVENTION  
OF CRUELTY TO ANIMALS  
AMENDMENT ACT, 2001LOI DE 2001 MODIFIANT LA LOI  
SUR LA SOCIÉTÉ DE PROTECTION  
DES ANIMAUX DE L'ONTARIO

Consideration of Bill 129, An Act to amend the Ontario Society for the Prevention of Cruelty to Animals Act / Projet de loi 129, Loi modifiant la Loi sur la Société de protection des animaux de l'Ontario.

**The Chair:** Now, section 1 of the act: are there any amendments or debate to section 1? Seeing none, I'll put the question. Shall section 1 carry? Section 1 is carried.

Section 2: Mr Colle?

**Mr Mike Colle (Eglinton-Lawrence):** I move that section 2 of the bill be amended by adding the following section:

“Offence of cruelty to animals, etc by breeders

“15.2(1) Every person involved in any way in the breeding of animals for sale who treats an animal with cruelty, abuses an animal, subjects an animal to undue or unnecessary hardship, privation or neglect or otherwise fails to treat an animal humanely or who encourages, consents to or acquiesces in any such treatment is guilty of an offence and on conviction is liable to a fine of not less than \$10,000 and not more than \$50,000 or to a term of imprisonment of not more than two years less a day, or to both.

“Offence by pet store owners, etc

“(2) Every owner or operator of a pet store or other retail outlet who offers for sale or sells an animal that the owner or operator knew or ought reasonably to have known was treated with cruelty, abused, subjected to undue or unnecessary hardship, privation or neglect or otherwise treated inhumanely is guilty of an offence and on conviction is liable to a fine of not less than \$10,000 and not more than \$50,000 or to a term of imprisonment of not more than two years less a day.”

**The Chair:** Do you wish to speak to the motion?

**Mr Colle:** Yes, just briefly, Mr Chairman. What we're trying to do here with these amendments is, first of all, include this bill to not only deal with cats and dogs but, as has been the tradition with the SPCA since 1919, for this to apply to all domesticated animals, all pets that are domesticated. So that's what (1) would be inclusive of. Then (2) basically deals with reducing the demand for animals from puppy mills by fining owners or operators of pet stores who willingly sell animals that are a product of puppy mills.

Those are the two reasons for these two parts of this amendment, to strengthen the bill to ensure that all animals that are domesticated as pets be included, as has been the tradition of the SPCA since 1919, and second, that pet store owners are prohibited and fined if they knowingly and willingly sell animals, pets, from pet mills.

**The Chair:** Further debate?

**Mrs Julia Munro (York North):** Yes, thank you, Mr Chair. I just want to speak briefly to the first part, in the first line, where it's in the breeding of animals. This bill is specifically designed to deal with a very specific issue, and that is the breeding of cats and dogs for sale and for breeding that doesn't meet standards of care.

While I appreciate the fact that within the context of the SPCA and their activities it is part of their responsibility to go beyond that, this amendment is specifically designed to deal with the issue of dogs and cats, puppies and kittens. That also means, then, with regard to part two, that it again is dealing with those people who are raising the animals and not meeting those standards of care.

**The Chair:** Further debate?

**Mr Michael Prue (Beaches-East York):** While I appreciate the fact that this is to deal with dogs and cats, surely the domestic pet industry is really large. Ferrets are now becoming quite popular household pets; they're warm-blooded mammalian creatures. There are enormous numbers of birds that are bred in captivity in Canada, everything from macaws and parrots, and you've got other less warm-blooded animals—iguanas are huge—lizards, fish, all manner of reptiles that are pets. Surely to harm or to treat them in inhumane ways is no less despicable. I'm just wondering and I cannot understand why it would be all right to treat a ferret or any other mammalian warm-blooded creature in a despicable way, but dogs and cats would somehow be separated from that. I really do have difficulty, and perhaps the honourable member could tell me why it's all right to treat some creatures with disrespect and cruelty, but not dogs and cats. Why are they singled out?

**The Chair:** Further debate?

**Mrs Munro:** Yes. I would just draw your attention to two things: one is that this proposed bill would be an addition to the current SPCA act, and it obviously then does afford the kind of protection for all animals. There is absolutely no question in my mind in terms of the question of animal protection in that broader context that you suggest. But the issue that many people have struggled with is the issue of animals, that is, dogs and cats, simply because of their popularity, being produced in a manner which does not meet standards of care. Certainly the SPCA has talked about, according to their records, there being as many as 400 of these in the province. It would seem to me that there's a greater urgency with regard to the protection of dogs and cats in these situations than others. They're already covered under the SPCA act.

**Mr Joseph N. Tascona (Barrie-Simcoe-Bradford):** I understand from what the member opposite indicated with respect to the intent was for it to apply to all domesticated animals. The Ontario SPCA Act has a specific definition for "animal" which states under section 1 that "'animal' includes a domestic fowl or a bird that is kept as a pet." So the act has already clearly indicated what is meant by "animal." That's what we're dealing with, with respect to what kind of creature or animal is already covered and is already codified with respect to the SPCA, so the member's amendment wouldn't do anything to change that. Also, the member opposite for the third party may not be aware of it, but that's what the definition of "animal" does cover at this moment in terms of what is deemed to be protected under this act.

**Mr Levac:** The thing I noticed, Mr Chairman, as I read—and I will plead ignorance to the complete order of law of the Ontario Society for the Prevention of Cruelty to Animals Act—I did notice in 15.1 the mention of penalty. With regard to penalty, it seems that there is no minimum, and unless that's covered off in the other part of the act—and if I'm misreading this I'd like to be corrected—with no minimum, it could be a fine of \$5 or whatever the case may be in terms of somebody being caught for the first time being cruel to an animal. Inside the amendment, it does indicate of "not less than" versus "as much as," and I think your act indicates a \$60,000 maximum but with no minimums. Is there a justification for the lack of a minimum standard? Because I realize that most laws now seem to be indicating quite clearly that there would be minimum fines to act as the deterrent in terms of the explanation given to me as to why people put minimums in now.

**Mrs Munro:** I just wanted to speak to that issue because I did look into it, and it was suggested to me that it's highly unusual, actually, although you do mention that there are some examples; but it is unusual to do it. There is the danger that it might be considered to be encroaching, certainly, on the power of the judiciary, on their ability to make those decisions. Even the issue of having a minimum of \$10,000, for instance, might limit the judiciary in a given situation.

I appreciate the fact that many of us privately might think that there are times when we've seen fines and penalties that appear to be too lenient, but in terms of putting it actually in legislation, it is certainly problematic.

1620

**Mr Levac:** Just on that issue, you mentioned one sentence in there: when you looked at it, it seemed that it wasn't a standard practice to put a minimum in, that you discovered that it was not typical?

**Mrs Munro:** That is correct.

**Mr Levac:** OK, and that means because of the respect for the flexibility of the judiciary versus the SPCA itself?

**Mrs Munro:** That's right.

**Mr Levac:** OK. I appreciate that.

**Mr Colle:** I'd just like to read into the record and for the edification of the committee what the SPCA has forwarded to all of us as an analysis of this bill. In terms of their comments, they say in "Proposed amendment of section 15(1): standards of care," in their document:

"The Ontario SPCA does not support proposed section 15.1(1) as currently drafted. Since its inception in 1919, the Ontario SPCA Act has protected all animals, not merely domesticated animals. The Ontario SPCA supports the standards of care as identified in proposed 1-5, but these standards, which deal with dogs and cats kept for breeding purposes and sale, should apply to all animals, not merely to cats and dogs used for breeding."

They go on to say, "The society favours a standards of care section, but only one that places general duties on all owners or custodians of all animals, not particular species of animal. Anything else would be inconsistent with the

Ontario SPCA Act.” So I don’t know if the member realizes that, by doing this, she’s being inconsistent with the SPCA act.

**Mr Norm Miller (Parry Sound-Muskoka):** I’d just like to comment about the part that I have a problem with, with these amendments. It is the fine of not less than \$10,000, the setting of the minimum. I certainly think that it should be up to the judge to look at the merits of the case and decide on a minimum fine. Certainly we see that the maximum is \$60,000, which is quite substantial, but I think it should be up to the judge to decide what the appropriate fine is. I do have a problem with it being a stated minimum amount.

**Ms Marilyn Mushinski (Scarborough Centre):** I guess I concur with what Mr Miller is saying in that I did a lot of research when I brought my private member’s bill, the Judicial Accountability Act. I think what it found was that where there are specified minimums and maximums, there was more of a tendency to lean on the specified minimum rather than the maximum. I believe, and I think evidence would show, that’s fairly prevalent within the Canadian justice system. Clearly there needs to be some very loud and clear messages with respect to abuse against animals. The fine of \$50,000 or a term of imprisonment to me is much more punitive than specifying a minimum of \$10,000 or both. My understanding also is that the Criminal Code is about to be amended to reflect increases in, I guess, discretion with respect to criminal activity and abuse against animals. So I think combined with those two, it would be far stronger to specify the maximum fine than to specify the minimum, because I do believe that courts will tend toward the lower rather than the higher amount.

**Mr Levac:** So judicial flexibility and freedom.

**Ms Mushinski:** Judicial accountability. Now that’s an issue that still needs to be discussed.

**Mr Tascona:** I’m just looking at subsection 15.2(2). I understand the intent of what the member of the opposition party is trying to accomplish. When you look at the language, “owner or operator,” it may very well be that the owner or operator is an absentee owner or may not be the one who is operating that part of the pet store or the retail outlet. It may just be a mere employee who is dealing with it and that’s certainly not going to catch the person who is involved in this type of operation.

The owner may never even be there, the operator may never even be there or may not even be hands-on for those particular operations because I know there are some pet stores that are fairly big franchise operations. Who’s the owner? Is it the 40% shareholder? Is it the person who has the financial stake in the company? What do you mean by “operator”?

Those terms really have to be defined and, quite frankly, they may be far too restrictive in terms of catching who’s going to be involved in that type of activity. It may be, just as I say, the mere employee who is basically operating that particular section of the pet store. That for a fact is how some of them do operate. You may not catch anybody under that provision. That’s

an unbelievable loophole in terms of driving through that particular section, “owner or operator.” It may not even be applicable to whom we’re trying to deal with if it’s a franchise operator.

The other part of it, “knew or ought reasonably to have known,” I think from a judicial point of view is a tremendously high standard for anyone to have to satisfy in terms of convicting anybody. I think the courts have had very great difficulty in dealing with that type of—no one’s going to outright admit, “Yes, I admit that I was cruel to that animal.” To try to build a case in saying, “Well, you ought reasonably to have known,” I can just see one legal expert after another legal expert saying, “The animal wasn’t cruelly treated.”

Who’s to say there was any cruelty? You have to have an eyewitness in terms of whether there was any cruelty. If you look at an animal, how are you going to tell whether there was cruelty? You may be able to find abuse, you may be able to see that there is injury to that particular animal. Can you connect that causal connection, saying, “That animal was injured,” to abuse or to cruelty without hard evidence in saying, “That actually happened”? I think that’s a bit of a leap of faith in terms of saying that there was a connection between an animal that was perhaps injured or didn’t look very well, and saying that there was a connection or that animal, because it doesn’t look well, has actually been cruelly treated or has been abused.

Let’s be fair to the people you’re trying to prosecute here for up to \$50,000. You’re going to have to have some kind of legal evidence to show there’s a connection between the condition of the animal and the fact that they’ve been treated cruelly and abused. If you’re not looking for a connection and you’re expecting the judge or whoever is going to decide that case, a JP, to say, “Well, the condition of the animal just has to cry out for the fact that that animal was abused,” I think it’s going to be very difficult. I think it’s reviewable, easily reviewed by another level of court.

I think what we’re looking at here, “knew or ought reasonably to have known,” is a tremendously high judicial standard for anyone who wants to prosecute that to meet. I think you’re creating a real problem, other than the loophole you can drive a truck through with respect to “owner or operator.” That’s not going to catch the person who’s operating that particular part of the pet store operation because there are all kinds of departments, as you know, in terms of dealing with the sizeable operators who are out there today, because they are getting bigger.

**The Chair:** Mr Colle?

**Mr Colle:** Yes, if I could speak to that. As you know, in the province of Ontario right now there is basically no prohibition to sell animals that are products of puppy mills. This is an attempt to stop the wholesale selling of puppies or other domesticated pets that are from mills and that are sold openly across Ontario. So right now there is basically no prohibition. It’s a free-for-all out there. In fact, 90% of all puppy mill products or animals

are sold in these pet stores, right under the government's nose, and the government's refusing to take action. So this is an attempt to act as a preventive initiative, to say, "You can't do this." Then it is an attempt to tell the owners and operators very clearly, "You can't do this."

1630

I'm more worried about protecting the animals than worrying about the legal niceties of protecting the so-called operators of these pet stores who knowingly and willingly sell these animals. It's a matter of leaving it up to a judge and the judge can decide whether that person is the legitimate operator-owner of that pet store. If we see that there is no documentation, or documentation that shows that this pet store has been knowingly and willingly selling these pets for years under the nose of the government, let that owner-operator prove in court that he or she is not selling these pets that are from puppy mills.

This is a reasoned attempt to put the onus on these people who profit from puppy mills and make them pay a heavy fine if they knowingly and willingly—and certainly you can find all kinds of excuses for people who do this and are doing it right now, or do we try to do something? This is a legitimate attempt to tell them, "You can't do this," and, "Prove that you've not selling animals from puppy mills."

I think this is a way of cutting down on these pet stores that are doing this across the province without taking any care of where the animals come from. They are the ones who are helping the puppy mill operators to profit. These pet stores have an obligation to the public because not only are they fostering this puppy mill industry, but also the purchasers of these pets are going to these pet stores and buying animals that are sick, that have been maltreated and will be a great burden to the family who buys that pet and will have increased costs in terms of pet costs.

Right now there are no restrictions on these pet stores that are part of the puppy mill industry. Let us send a strong message that they cannot hide behind legal technicalities, that they should make it their job to ensure that they are buying their pets from notable breeders and not just any puppy mill, which they are doing today. Let's take at least the first step to send a strong message to these people who are partners in the puppy mill industry.

**Mr Tascona:** No one's disputing that it's a legitimate attempt. Let's make it a sound step toward dealing with this. The fact of the matter is the only thing that this section would catch would be a sole proprietor operating their own pet store, and they are actively being the person who is dealing with the animals. That's the only way this would catch anything. Quite frankly, that's not reality in the real world today, if you go to a pet store operation where they're franchised out and where you're going to see the huge volumes that are going to be caught.

I understand the member's making an attempt here. Let's make it a realistic attempt. That amendment's not going to solve anything.

**Mr Colle:** It's pretty obvious. If you are the owner or the franchisee of a pet store and you sell pets on a regular basis, you, as the owner or the operator for someone else, have a responsibility. You're saying, "Don't try it because there's no way you're going to catch them." I say there should be a responsibility on that owner, on that proprietor, to have some kind of way of ensuring that he or she is not selling animals from puppy mills.

I think it's pretty obvious who owns a pet store and who operates it and if you hold that franchise. For you to tell me that's impossible to do in this day and age in the province of Ontario, I think you're living in a different province. These people are registered as owners, franchise holders, and in some cases they've been in business for decades. If that person is the recognized owner or operator or franchise holder, they should be brought to prove that they didn't know it was going on.

Let the owner come before a judge and say that they were not aware that for 10 years they've been selling pets from puppy mills. I say, put the onus on the operator to prove that they are not doing it, rather than giving him all kinds of legal bureaucratic excuses of why they shouldn't be brought before a judge if they are a known profiteer of puppy mills.

Again, it is an attempt to make sure that those who profit by the puppy mill operations, by selling them knowingly and willingly, should be at least told that it's illegal in the province of Ontario. Right now in the province there are no laws prohibiting that. Anyone can sell puppy mill animals right now because there's nothing on the books. At least this is something that initiates a responsibility on the part of these partners in the puppy mill industry to be responsible, and that they might be taken to court and have to prove that they did this practice without any kind of responsibility.

**Mr Tascona:** We live in a society where you're innocent until you're proven guilty. The fact of the matter is it's going to be for the person who's going to prosecute this case to prove that the owner or the operator had actual knowledge. The fact of the matter is, this is not a reverse onus provision where you have to prove you're innocent before you're proven to be guilty. All I'm saying is, the way it's drafted, if the person is a franchise owner who's not even near the operation of the franchise, holds about a 50% stake, doesn't know anything that's going on with that operation, this isn't going to catch him in terms of whether they had knowledge or not. That's the bottom line.

If you wanted to do something constructive, you would have defined what an owner is, you would have defined what an operator is. But if you think that an owner and operator has to go to court and prove their innocence, the bottom line is it's the other way around, and you're not going to accomplish anything by this. This is not a reverse onus provision where I have to prove my innocence first. So the bottom line is you're not going to catch anything. I'm not disputing your intent here; what I'm disputing is this isn't going to catch flies.

**Mr Prue:** I guess I'm just like a trout rising to the bait. I've heard this, but this is a law of civil jurisdiction.

It's on the balance of probabilities. It's not on the Criminal Code where it's beyond a reasonable doubt; it's on the balance of probabilities. If, on the balance of probabilities, a person, whether they are a franchisee or an owner, ought to have known because they've had eight or 10 puppies in the past year that have had broken limbs or things wrong with them, then surely a judge or a justice of the peace properly within his or her jurisdiction would look at that kind of evidence and think that they ought reasonably to have known. It is not saying, "We proved it beyond a shadow of a doubt that you knew," it's only saying that on the balance of probabilities, a reasonable person, having seen five puppies with broken legs this year, should have thought that maybe something is a little amiss here. And that's, I think, all that's being suggested.

I don't think that this is onerous. I don't think it's difficult. I don't think that trying to dance around the legal niceties of what a court or a judge would do, so instructed, is where we should be at. You will never know whether these laws are successful, ever, ever, until they're tested in the court. I would agree with you, it may be a difficult one. But you will never know whether Mr Colle is right or wrong until you get a couple of judgments in under the belt and everybody understands then whether this was the way to proceed.

Quite frankly, it's my belief that we should be coming at this as hard as is humanly possible in order to give every single opportunity for judges and society to react to the circumstances in which these animals are finding themselves. I don't know what the reluctance is on the part of anyone to give the best possible legislation, the best possible hook that a justice of the peace could hang his or her hat on, including the provision that it be known or might reasonably be expected to know. You find that in many, many pieces of legislation, in civil proceeding; not too many in criminal, but in civil proceeding it's quite common. I don't see anything wrong. I will definitely be supporting it.

**The Chair:** Further debate? Seeing none, I'll put the question.

**Mr Colle:** Recorded vote, please.

**The Chair:** All those in favour of Mr Colle's amendment?

#### Ayes

Colle, Levac, Prue.

#### Nays

Miller, Munro, Mushinski, Tascona.

**The Chair:** That amendment is lost.

The next amendment is also yours, Mr Colle.

**Mr Colle:** I move that section 2 of the bill be amended by adding the following section:

"Offences—general

"15.3 Every person is guilty of an offence and on conviction is liable to a fine of not less than \$10,000 and

not more than \$50,000 or to a term of imprisonment of not more than two years less a day who,

"(a) causes or assists in causing an animal to be in distress;

"(b) trains or assists in training an animal to fight another animal; or

"(c) fails to comply with an order made by an inspector or an agent of the society under section 13."

1640

One of the main targets here is basically to put a halt to people who are in the business of breeding animals as what they term "fighting dogs." It's susceptible to certain breeds and again it's something that's widespread across the province. It's something the SPCA has been asking for for years, that the SPCA act be amended to prohibit this practice because, again, right now there is no restriction on people breeding these animals that are bred for the sole purpose of fighting.

The others, (a) and (c), help to define specific actions to be taken to fine people who do not help animals in distress. Specifically in some cases, one of the problems has been that people who operate puppy mills do not comply with orders of inspectors from the SPCA. This is pretty habitual. In the case of the Miseners, they've been failing to comply for about 25 years. So this would give them more strict support in letting the person who is operating the puppy mill know that they must comply with the order of the society under section 13.

Those are my comments, Mr Chair.

**The Chair:** Thank you very much. Further debate?

**Mrs Munro:** I want to speak to the issues that are raised in clauses (a), (b) and (c). Certainly, the question of distress is dealt with in the current act, so I think it's already covered in the current act.

The question of "trains or assists in training an animal to fight another," I think all of us would agree that this certainly doesn't belong, according to the mores of our society, but there is the question of it being within the Criminal Code, but also it's certainly outside the purview of this bill.

As far as clause (c) is concerned, the question of section 13, this part of the current act is obviously not impacted in any way by the proposed bill that we have here.

**The Chair:** Further debate?

**Mr Colle:** Just a comment. This bill talks about a standard of care in terms of the breeding of animals. Certainly most people would not think that breeding animals to fight each other and to be cruel to each other should be part of the standard of care, that it would not be acceptable in that standard of care. That's why I think it very well fits the parameters of this act or the SPCA act, where it's very specific that this practice, which has become more popular since this act was last amended in 1969, is a real and present danger, not only to pets, but it's a very serious danger to ordinary citizens across Ontario who are sometimes subject to these cruel breeding practices. I think it's very appropriate to put this in part of the standard of care where anyone who does

this—and it's not done in a haphazard fashion. These are sometimes mills that specialize in training animals to fight each other. So I think this is an appropriate way of at least putting an end to that perhaps, and warning them they can't do it without being fined.

**Mr Tascona:** Just to deal with training or assisting in training an animal to fight another animal, I understand that Bill C-15, which is the Criminal Law Amendment Act, 2001, which is federal legislation, is proposing a section with respect to criminal liability with respect to fighting or baiting of animals, including training an animal to fight another animal. It's going to set out penalties. The penalties are going to range to a maximum punishment of five years' imprisonment when the crown proceeds by indictment or a maximum of 18 months' imprisonment where the crown proceeds by way of summary conviction. So quite frankly, the type of conduct that we're dealing with here certainly is being dealt with by the federal government. The type of conduct you're looking at is prison time, in terms of dealing with that type of activity. I wouldn't want to see an overlap in this, but the federal government appears to be dealing with it through Bill C-15.

**Mr Colle:** I just think this is a specific opportunity under the powers of the Ontario government. It's very clear they can do that. By sending a strong signal that this will not be tolerated in Ontario—whatever the federal government does is added protection on top of that. So for us to fail to act on this I think is a dereliction of duty. This is a present practice that's prolific across the province, so for us to not even refer to this in terms of a standard of care, in terms of breeding practice, is an omission of a serious part of the mistreatment of animals that causes undue harm to them right from birth, almost, because this training for aggression and for fighting is done from the earliest of days. Again, it's common, and there are no laws in the province of Ontario to stop that. So let the federal government do what they're going to do, and I hope it's strong legislation, but we have the power under the Ontario SPCA Act to do that. So I'm attempting to also stop these puppy mill breeders who engage in this type of horrific business practice, as far as they're concerned, to say it's not allowed in Ontario.

**Mr Prue:** The problem I have, and I thank you for bringing up Bill C-15, is that it's not law, and the current Criminal Code quite specifically has prohibitions against the likes of cockfighting, dogfighting, bear-baiting, terriers killing rats and every other kind of disgusting—I don't know what else to call it—display the human mind might think up. But it does not—unless C-15 is proclaimed into law, and not until such time as it is tested in the courts—provide the protection that you're talking about. I can understand we're both talking about it at the same time, but again I don't have any real problem with this particular section. I'm not so concerned about (a) and (c), because I think it has been dealt with primarily at other places in the act, but (b), the training or the assisting in training, is a novel and new idea which has not been in legislation before and may not be in legislation

unless the federal bill makes its way all through Parliament and through the Senate and is proclaimed, and all the other things that parliamentarians know only too well. The fact that it's being discussed doesn't necessarily mean it's going to happen. To err on the side of safety, it's better to proceed with it. It can always be withdrawn later on if the federal bill is seen to cover all of the same angles.

I don't have any difficulty with the provision that people who train or assist in the training of animals to kill or maim other animals should have a penalty, and we simply do not have a penalty in the province of Ontario at this time, nor do we have a penalty in Canada at this time.

It goes far beyond the normal thing. I know people don't generally consider anything can be cruel to fish, but people breed Siamese fighting fish with the sole purpose of feeding one so the other gets jealous and then they remove a piece of glass so the starved one will attack the one that has been well-fed and of course the starved one always loses—I mean, it's just to watch a hopeless display of an animal, a fish, that has been mistreated. I no more liken that to sport or to fun or to anything else—and I think anyone who breeds those should be subject to penalty, and they do it on purpose, because there's no other purpose for having Siamese fighting fish except to have them fight.

**Mr Miller:** I have a question for Mr Colle in terms of this definition of "trains or assists in training an animal to fight another animal." Would that capture, for example, hunting with a bird dog, like a Labrador retriever, which is fairly common practice in Ontario, to go partridge hunting or pheasant hunting? In the situation where that occurs, the dogs sometimes do just grab the bird before it has flown, for example, and the dogs have to be trained to find the birds to flush them out. What would be your interpretation of this? Would those animals be captured under this?

1650

**Mr Colle:** No, that in no way would be the concern of the law, I would hope, because what we're really talking about here, Mr Miller, is people who breed pit bulls. From the earliest days, they teach them total aggression against other dogs. So it's dog-to-dog aggression and it's systematic aggression that's inbred and basically all the behaviour patterns of the animals are relating to aggression. So it in no way, I think, equates to that practice, which I don't think is really under the purview of the SPCA act or us here today. What we're talking about is this vicious training of dogs for the sole purpose of attacking other animals, especially other dogs.

**Mr Miller:** I certainly understand your intent, but when a bird dog grabs a bird, is that not attacking it, is that not fighting with it?

**Mr Colle:** No, that's not my understanding of it. I'm talking about dog-versus-dog aggression. Some people use this to make money. They sell tickets to these events. They basically have an underground gambling business

where they bet on dogs that fight. So we're talking about something completely different.

**The Chair:** Further debate? Then I'll put the question.

**Mr Colle:** A recorded vote, please.

### Ayes

Colle, Levac, Prue.

### Nays

Miller, Munro, Mushinski, Tascona.

**The Chair:** That amendment is lost.

Mr Colle.

**Mr Colle:** I move that section 2 of the bill be amended by adding the following section:

"Cease and desist order

"15.4(1) Where, in carrying out his or her duties under this act, an inspector or agent of the society becomes aware or has reasonable grounds for believing that an animal is in distress or in immediate danger of being in distress in any place where the breeding of animals for sale is carried on, the inspector or agent may order the owner or custodian or, if the owner or custodian is not present, any other person present in the place to immediately cease all of the activities relating to such breeding and all other activities causing or contributing to the distress of an animal.

"Form of order

"(2) The order under subsection (1) may be made orally or in writing, may be made without prior notice and is effective immediately.

"Timeliness of written order

"(3) An order under subsection (1) that is given orally shall be provided in writing as soon as practicable in the circumstances and in no case later than seven days after the oral order is given."

It's just an attempt to ensure that when a society officer comes to a scene where there are unsanitary conditions or abusive breeding practices taking place at one of these puppy mills and there's an immediate danger for the animals, the officer may on the spot essentially tell them to cease and desist. Right now that is not possible. The officer would have to go through a legal process in getting a warrant and it goes back and forth. This would give the officer attending the site, seeing that the danger is there and it's relevant to the health of the animals, the right to tell the person on-site to cease and desist. That's the essential direction here and I think it would help the SPCA in carrying out its duties right now without going through all kinds of red tape and bureaucracy to get the job done to protect these animals.

**The Chair:** Further debate? Seeing none, I'll put the question.

**Mr Colle:** A recorded vote, please.

### Ayes

Colle, Levac, Prue.

### Nays

Miller, Munro, Mushinski, Tascona.

**The Chair:** That amendment is lost. Over to you again, Mr Colle.

**Mr Colle:** I move that section 2 of the bill be amended by adding the following section:

"Seizure of animals

"15.5(1) Where a charge has been laid under section 15.1, 15.2 or 15.3, an inspector or agent of the society may, if he or she has reasonable grounds for believing that it would be in the best interests of the animals to do so, remove any or all of the animals from the care or custody of the person being charged and hand them over to the custody of the society.

"Return

"(2) Subject to subsection 14(2), the society shall return the animals taken under subsection (1) to the care or custody of the person from whom they were taken only if the person is not found guilty of any of the charges described in subsection (1)."

What this allows for, which is very cumbersome at this time, is for an SPCA officer to in essence remove the injured pets/animals from the site and from the custody of that animal breeder or puppy mill breeder and bring them to safety, put them in the custody of the society and only return them if they're proven not guilty. Right now that can't take place, so the animals are subject to delays and court proceedings etc. This is a speedy way of protecting animals and taking them out of the custody of the abusers.

**The Chair:** Further debate?

**Mr Prue:** I have a question, Mr Chair. Since sections 15.2, 15.3, 15.4 and 15.5 have all been defeated in committee, I need to know what I'm voting on.

**The Chair:** The current amendment would have an editorial comment made by legislative counsel deleting references to 15.2 and 15.3, but since 15.1 is still a valid section of the act, this amendment is in order.

**Mr Prue:** OK, but this clearly says, "Sections 15.2, 15.3, 15.4 and 15.5 do not apply ..."

**The Chair:** I think you're on the next amendment, Mr Prue.

**Mr Prue:** Oh, am I on the next one? Sorry. I must have flipped the page. I'm sorry, I did; excuse me.

**The Chair:** Any other debate?

**Mrs Munro:** I would just draw to the attention of other members that the current act, under section 13, does read:

"Where an inspector or an agent of the society has reasonable grounds for believing that an animal is in distress and the owner or custodian of the animal is present or may be found promptly, the inspector or agent may order the owner or custodian to,

“(a) take such action as may, in the opinion of the inspector or agent, be necessary to relieve the animal of its distress; or

“(b) have the animal examined and treated by a veterinarian at the expense of the owner or custodian.”

I think the intent of this amendment is covered by the current part of section 13, which does mean that there is that timeliness that is part of the intent in this proposed amendment.

**Mr Colle:** I think this amendment, for instance, is one of the amendments that the SPCA has been asking for and if it was already in the legislation, I don't know why the SPCA would be asking for it to specifically be an amendment.

My understanding of the situation right now is it's very difficult for the SPCA to take custody of these animals. A case in point is the Miseners. You're not dealing with the Boy Scouts of America here; you're dealing with ruthless people who have habitually broken the law since 1964. In fact, as we speak, the Miseners, according to reports, are still selling these abused animals today and the SPCA cannot under present legislation even go there and remove these animals because there are so many roadblocks.

This is an attempt, again, to ask for the speedy removal of these abused animals from the custody of the abusers and it's something the SPCA would like because the present act is not strong enough.

**Mr Levac:** The quoted section of the act that Mrs Munro indicated, if I heard correctly, did not indicate whether they can be removed. It indicated quite clearly that they could have a veterinarian come in and give service or ask the owner-operator to make changes for the pets on site. It did not say “remove.” This amendment makes it very specific what the SPCA is asking for, and that is the removal of the animals from the site, and if the operator-owner are not found guilty then the animals come back to the owner-operator in a better condition, probably, than when they left. So I'm making it clear that the quoted section of the act did not indicate removal.

1700

**The Chair:** Further debate?

**Mr Colle:** Recorded vote.

**Ayes**

Colle, Levac, Prue.

**Nays**

Miller, Munro, Mushinski, Tascona.

**The Chair:** That amendment is lost.

**Mr Prue:** Now?

**The Chair:** Now, Mr Prue; you don't even have to ask the question. The next amendment would be out of order because it relates to sections that have already been defeated.

I believe Mrs Munro has an amendment and I think it has been circulated. One second; legislative counsel is just redrafting something.

**Mrs Munro:** Yes, I do have the motion.

**The Chair:** All right. Amendments are in order from the floor. In the absence of any time allocation motion they're always in order.

**Mrs Munro:** I move that section 15.1 of the act, as set out in section 2 of the bill, be amended by striking out “five years” in subsection (3) and in subsection (5) and by substituting in each case “two years.”

**Ms Mushinski:** Less a day.

**Mrs Munro:** Legislative counsel suggests “two years” is fine.

**The Chair:** Any debate?

**Mr Colle:** Is there any explanation of that amendment? And could I have it in writing, please?

**Mrs Munro:** Yes. As an explanation, it is designed to be more consistent with other provincial offences.

**The Chair:** The Chair is getting those photocopied.

**Ms Mushinski:** Do offences over two years less a day apply to the Criminal Code?

**Mr Colle:** That's all right.

**Mr Levac:** Can we hear one more time if you think that's appropriate?

**Ms Susan Klein:** It is fine.

**Mr Colle:** It's provincial offences that are two years less a day.

**Mr Levac:** OK, I just wanted to hear it.

**Mr Prue:** I just wanted to hear from legislative counsel: is there any provincial legislation that has more than two years less a day?

**Ms Klein:** There are. Actually, as I searched I found a few offences that had three-year jail terms; I found a couple with five-year jail terms, but it's very uncommon. The most common is two years.

**Mr Prue:** I realize it's uncommon. Those ones that are three years and five years, can you, just off the top of your head, tell me what they are? Because I consider this quite serious. I think most people in this society think this is more than your run-of-the-mill provincial offence, like going through a red light.

**Ms Klein:** I have a bunch here. I'm not quite sure I can describe the offences properly. There's an offence in the Child and Family Services Act; it seems to be with respect to publication of identifying information. That's three years.

I haven't brought with me what the offences are. I have the penalty sections, but there are a couple in the Child and Family Services Act. Let me see if I can identify any more.

**Mr Prue:** And those penalties haven't been ruled unconstitutional or improper by any courts?

**Ms Klein:** Not as far as I know. But they are very rare.

**Mr Prue:** They are the exception to the rule.

**Ms Klein:** They're very, very rare.

**Mr Prue:** OK, thank you.

**Ms Mushinski:** If the Criminal Code is amended—as is being proposed, it's my understanding, by the federal government—will that in any way change or could it in any way change the provincial code section that applies to a maximum sentence of two years less a day?

**Ms Klein:** I'm not sure what Criminal Code amendments you're talking about.

**Ms Mushinski:** OK, that's fine.

**The Chair:** Any further debate? Seeing none, I'll put the question.

All those in favour of the amendment? Opposed, if any? The amendment is carried.

Shall section 2, as amended, carry? It is carried.

Are there any amendments or debate on sections 3 and 4?

Seeing none, shall sections 3 and 4 carry? Carried.

Shall the title of the bill carry? Carried.

Shall Bill 129, as amended, carry? Carried.

Shall I report this bill, as amended, to the House?

Agreed. I shall do that tomorrow.

Thank you, all committee members, for your attendance and deliberations today. The committee stands adjourned.

*The committee adjourned at 1705.*

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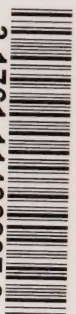
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